UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

JETBLUE AIRWAYS CORPORATION and SPIRIT AIRLINES, INC.,

Defendants.

Civil Action No. 1:23-cv-10511-WGY

REDACTED PUBLIC VERSION

PLAINTIFFS' PROPOSED FINDINGS OF FACT

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I. THE DEFENDANTS

A. Spirit Airlines

1. **Scope of Spirit Network and Routes:** Spirit Airlines, Inc. ("Spirit" or "NK") is the largest ultra-low-cost carrier ("ULCC") in the United States in terms of both seat capacity, measured in "ASMs," or "available seat miles,"[1] and number of aircraft, or "fleet." Oct. 31, 2023, Tr. Vol. 2, 72:16-23, 82:13-83:2 (Christie/Spirit), discussing Tr. Ex. 347 at -959.

2. Spirit has grown faster on a percentage basis than legacy carriers and low-cost carriers ("LCCs"), and is among the fastest growing ULCCs. Oct. 31, 2023, Tr. Vol. 2, 114:9-115:13 (Christie/Spirit); *see also infra* Part II.E.5.

3. Today, Spirit accounts for about 46 percent of domestic ULCC ASMs. Nov. 21, 2023, Tr. Vol. 1, 22:4-18 (Chipty/Pls. Expert). And Spirit accounts for 71 percent of domestic ULCC capacity on the routes it serves. *Id.*

4. As of year-end 2022, Spirit "served 92 destinations in 16 countries throughout the United States, Latin America[,] and the Caribbean." Tr. Ex. 39 at -444; *see also* Tr. Ex. 862.

5. Spirit "offers low-fare service across the lower 48 [states of the United States] and Latin America." Christie (Spirit) Lit. Dep. 17:15-18:6, June 6, 2023; *see also* Kirby (Spirit) 30(b)(6) CID Dep. 23:17-20, Jan. 12, 2023.

6. Spirit's network is primarily comprised of routes on the eastern half of the United States, but Spirit is working toward becoming "a more national carrier" by serving cities in the west. Nov. 7, 2023, Tr. Vol. 2, 130:12-25 (Kirby/Spirit).

7. Spirit's three largest cities, called "core" cities, are Fort Lauderdale, Florida; Orlando, Florida; and Las Vegas, Nevada. Nov. 7, 2023, Tr. Vol. 2, 129:9-12 (Kirby/Spirit),

[1] "ASMs" is a common measurement of capacity in the airline business. Oct. 31, 2023, Tr. Vol. 2, 73:5-19 (Christie/Spirit).

discussing Tr. Ex. 285 at -062. In addition, Spirit identifies Los Angeles, California and New York City, New York ("New York City") as part of its growing network "foundation." Nov. 7, 2023, Tr. Vol. 2, 129:19-130:5 (Kirby/Spirit).

8. **Spirit's ULCC Business Model:** Spirit's "objective is to deliver low fares so that more people have the ability to travel," Christie (Spirit) Lit. Dep. 17:15-18:6, June 6, 2023, and Spirit "strive[s] to be recognized by [its] guests and potential guests as the low-fare leader in the markets [it] serves," Tr. Ex. 39 at -447; Christie (Spirit) Lit. Dep. 74:20-75:2, June 6, 2023 (agreeing with this statement).

9. Specifically, Spirit's 2022 10-K explains that Spirit's focus is "price-sensitive travelers," for whom Spirit's "low fares and unbundled service offering" are particularly appealing. Tr. Ex. 39 at -448. Spirit's "business model allows [Spirit] to compete principally by offering customers unbundled base fares that remove components traditionally included in the price of an airline ticket." *Id.* at -444, -446 ("Our ULCC business model provides guests low, unbundled base fares with a range of optional services, allowing guests the freedom to choose only the options they value.").

10. Spirit's unbundled model means the base price of an airline ticket is separate from the price of additional items. Christie (Spirit) Lit. Dep. 67:11-15, June 6, 2023.

11. These additional items, called "ancillaries," include things like "checked and carry-on bags, advance seat assignments, priority boarding[,] and refreshments." Tr. Ex. 39 at -444; Nov. 7, 2023, Tr. Vol. 1, 54:12-25 (Gardner/Spirit) (describing ancillaries as products or services offered for a price on an à la carte basis separately from the price of the ticket, such as carry-on bags, paid seat assignments, Wi-Fi, larger seats, *etc.*); Oct. 31, 2023, Tr. Vol. 2, 90:16-25 (Christie/Spirit), discussing Tr. Ex. 347 at -963.

12. One example of an ancillary product Spirit offers for a charge on top of the base fare is Spirit's "Big Front Seat." Nov. 3, 2023, Tr. Vol. 2, 134:14-135:2 (Klein/Spirit); Tr. Ex. 347 at -963. Spirit's Big Front Seat product is similar to the domestic first-class seat product on legacy airlines' aircraft and wider than both a standard JetBlue seat and a standard Spirit seat. Nov. 3, 2023, Tr. Vol. 2, 158:20-159:3 (Hayes/JetBlue).

B. JetBlue Airways

13. **<u>JetBlue Network and Routes</u>:** JetBlue Airways Corp. ("JetBlue" or "B6") was founded in 1998, Nov. 3, 2023, Tr. Vol. 2, 147:5-6 (Hayes/JetBlue), and, since then, has built itself up as a robust competitor in the U.S. airline industry, competing against all carriers "across the spectrum" of travelers and competing against ULCCs for "more price-sensitive leisure customer[s]." Nov. 6, 2023, Tr. Vol. 1, 40:3-8, 55:6-14 (Hayes/JetBlue); Nov. 3, 2023, Tr. Vol. 2, 152:7-17 (Hayes/JetBlue).

14. As of December 31, 2022, JetBlue served 108 cities in 32 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and 24 countries in the Caribbean and Latin America, Canada, and Europe. Tr. Ex. 59 at -966; *see also* Tr. Ex. 75 at -402.

15. JetBlue operates primarily out of six "focus cities": Boston, Massachusetts; New York City; Miami/Fort Lauderdale, Florida; Orlando, Florida; San Juan, Puerto Rico; and Los Angeles, California, and over 90 percent of JetBlue's routes touch one of these six cities. Nov. 1, 2023, Tr. Vol. 2, 148:15-19 (Clark/JetBlue); Nov. 2, 2023, Tr. Vol. 1, 59:23-60:3 (Clark/JetBlue); *see also* Tr. Ex. 59 at -966.

16. JetBlue's focus cities differ from hubs, discussed *infra* Parts II.A.2-3, by catering primarily to travel by the local population of the city as opposed to connecting customers, Nov. 9, 2023, Tr. Vol. 2, 123:4-17 (Friedman/JetBlue); Nov. 6, 2023, Tr. Vol. 1, 71:16-72:1

(Hayes/JetBlue); Hayes (JetBlue) CID Dep. 29:6-30:7, Jan. 24, 2023; *see also infra* Part II.B.

17. At Boston Logan International Airport ("Boston," "Boston Logan," or "BOS"), JetBlue and Delta Air Lines ("Delta" or "DL") are the two largest airlines by total passengers carried; at Fort Lauderdale, JetBlue and Spirit are the two largest airlines by passengers carried. Nov. 3, 2023, Tr. Vol. 2, 147:7-18 (Hayes/JetBlue).

18. JetBlue has historically been concentrated in the northeastern United States. Nov. 2, 2023, Tr. Vol. 2, 122:20-24 (Clark/JetBlue).

19. **<u>JetBlue's Business Model</u>:** JetBlue's business model has evolved over time. It went from offering a coach-only product to also offering the first domestic lie-flat business class product called "Mint" starting in 2014. Nov. 9, 2023, Tr. Vol. 2, 141:19-142:4 (Friedman/JetBlue); Nov. 6, 2023, Tr. Vol. 1, 62:23-63:15 (Hayes/JetBlue). Since 2014, JetBlue has expanded Mint to international long-haul routes. Hayes (JetBlue) Lit. Dep. 61:21-62:6, June 14, 2023.

20. During November 2019, JetBlue adjusted its offerings to introduce an unbundled product called "Blue Basic," which unbundles the JetBlue base fare from other ancillary items, to better compete with Spirit's and other ULCCs' standard products as well as with legacy airlines' basic economy products. Nov. 1, 2023, Tr. Vol. 2, 159:15-160:10 (Clark/JetBlue); Nov. 2, 2023, Tr. Vol. 1, 11:9-13 (Clark/JetBlue); *see also infra* Part II.D.1 & Part V.B.1.b.

21. Because of JetBlue's efforts to expand its product offerings to include more premium products and cater to business travelers, many in the airline industry have referred to JetBlue as a "hybrid" carrier or "niche" carrier rather than a low-cost-carrier ("LCC"). *See infra* Part II.A.4.

II. THE AIRLINE INDUSTRY

A. Different Network Structures, Cost Structures, And Business Models In The Airline Industry

1. The Airline Industry Has Consolidated over The Last 20 Years

22. As Spirit wrote in a 2021 complaint to the U.S. Department of Transportation ("DOT"), the airline industry "is far more consolidated than it was in 2002. In 2002 there were six legacy carriers as well as Southwest and several smaller low-fare carriers including Spirit, JetBlue[,] and AirTran. Today there are only three legacy carriers. . . . AirTran is gone and Virgin America, which was a startup in 2007 is also gone." Tr. Ex. 340 at -374-75.

2. Legacy / Network Carriers

23. **U.S. Legacy Airlines:** A "legacy carrier" is an airline with a long history of operating in the United States. Klein (Spirit) Lit. Dep. 49:12-50:3, June 27, 2023. In the United States, legacy or "network" carriers are the largest three airlines: Delta, United Airlines ("United" or "UA"), and American Airlines ("American" or "AA"). Oct. 31, 2023, Tr. Vol. 2, 74:5-14 (Christie/Spirit).

24. **Legacy Business Model:** Legacy airlines, on average, operate at higher cost than low-cost carriers ("LCCs") and ultra-low-cost carriers ("ULCCs"). Kirby (Spirit) Lit. Dep. 15:9-17, May 26, 2023; *see also* Klein (Spirit) Lit. Dep. 51:10-14, June 27, 2023 (regarding ULCCs, in particular); Christie (Spirit) Lit. Dep. 29:2-8, June 6, 2023. The "costs" being described are unit operating costs, and industry participants typically measure unit operating costs by costs per available seat mile, or "CASM." Oct. 31, 2023, Tr. Vol. 2, 72:24-73:19 (Christie/Spirit).

25. Legacy airlines also, on average, have higher fares than both LCCs and ULCCs. Christie (Spirit) Lit. Dep. 29:10-17, June 6, 2023.

26. In addition, legacy airlines tend to have fewer seats per comparable aircraft than LCCs or ULCCs. Christie (Spirit) CID Dep. 26:12-18, 26:21-27:3, Jan. 24, 2023.

27. Legacy airlines tend to attract a greater percentage of corporate customers, meaning passengers flying for work, than LCCs or ULCCs do. Christie (Spirit) CID Dep. 25:6-16, Jan. 24, 2023. According to a June 28, 2022 presentation given by Spirit to the Aviation Consumer Protection Advisory Committee ("ACPAC"), an organization within the DOT, legacy airlines target consumers for whom someone else is paying for their ticket, price is of low importance, and the trip purpose is "corporate." Tr. Ex. 320 at -829 (slide 4, in color); Nov. 3, 2023, Tr. Vol. 1, 64:17-65:5 (defining the ACPAC); *see also* Klein (Spirit) Lit. Dep. 49:12-50:3, June 27, 2023 (explaining that typically, legacy carriers have a "mature business" and offer a product that is "very attractive to corporate travelers").

28. Historically, legacy carriers offered a more bundled product, but many currently offer a relatively unbundled product they began offering to compete with ULCCs. *See infra* Part II.D.1.

29. **Legacy Hub-and-Spoke Network Structure:** Legacy carriers also typically operate out of large airport hubs that carry travelers to their destinations via connecting flights. Nov. 1, 2023, Tr. Vol. 1, 29:4-30:10 (Spirit/Christie); Nocella (United) Lit. Dep.14:14-15:7, June 28, 2023; Fintzen (JetBlue) CID Dep. 89:19-90:7, Jan. 10, 2023 (defining hub-and-spoke networks as those in which "aircraft come in and out of the city and connect traffic, connect passengers at defined times of the day").

30. This hub-and-spoke model involves aircraft arriving in groups, which allows passengers to efficiently connect between all the aircraft on the ground and depart at similar times of day. Nocella (United) Lit. Dep. 16:7-21, June 28, 2023; Fintzen (JetBlue) CID Dep. 89:19-90:7, Jan. 10, 2023. Reliance on connecting traffic via hubs increases an airline's costs as aircraft spend more time "on the ground." Oct. 31, 2023, Tr. Vol. 2, 85:25-86:19

(Christie/Spirit).

3. Low-Cost Carriers

31. **U.S. LCCs:** JetBlue and Southwest Airlines ("Southwest") are often identified as LCCs as well as Alaska Airlines ("Alaska") and Hawaiian Airlines ("Hawaiian"). Oct. 31, 2023, Tr. Vol. 2, 74:15-23 (Christie/Spirit) (listing JetBlue, Southwest, and Alaska as LCCs); Christie (Spirit) Lit. Dep. 25:16-23, June 6, 2023 (also including Hawaiian for inter-island service as an LCC); *accord* Biffle (Frontier) Lit. Dep. 20:16-21:7, June 14, 2023; Decaire (Southwest) Lit. Dep. 35:17-19, 36:13-16, June 22, 2023 (Southwest views itself as an LCC).

32. Both Southwest's and JetBlue's statuses as LCCs, however, are under debate in the airline industry. For example, the Chairman of Spirit's Board of Directors, Mac Gardner, has questioned whether Southwest today can still be characterized as an LCC, Gardner (Spirit) Lit. Dep. 32:14-22, June 27, 2023, and others have expressed similar skepticism about the low-cost nature of Southwest's business model, *e.g.*, Nov. 14, 2023 Tr. Vol. 1, 40:15-19, 41:1-4 (Biffle/Frontier); Lusso (JetBlue[2]) Lit. Dep. 45:20-46:1, June 7, 2023; *see also* Nocella (United) Lit. Dep.14:12-15:13, June 28, 2023 (noting media discussions will sometimes describe Southwest plus the legacy carriers as the "Big Four"). With respect to JetBlue, industry participants have also questioned whether JetBlue's cost structure and business offerings lend themselves to a traditional LCC model, or, if JetBlue is more properly understood to be a hybrid carrier. *See infra* Part II.A.4.

33. **LCC Business Model:** LCCs on average, operate at higher cost than ULCCs and lower cost than legacy/network carriers. Oct. 31, 2023, Tr. Vol. 2, 74:15-16, 123:13-21 (Christie/Spirit); Nov. 3, 2023, Tr. Vol. 1, 151:23-25 (Hayes/JetBlue); Kirby (Spirit) Lit. Dep.

[2] Former JetBlue employee.

14:13-15:2, May 26, 2023; Klein (Spirit) Lit. Dep. 59:19-21, 59:23-60:2, June 27, 2023; Christie (Spirit) Lit. Dep. 25:7-15, June 6, 2023; Biffle (Frontier) Lit. Dep. 20:16-21:7, June 14, 2023.

34. Likewise, generally, LCCs' fares are somewhere between those of ULCCs and those of legacy/network carriers. Kirby (Spirit) 30(b)(6) CID Dep. 26:19-27:3, Jan. 12, 2023.

35. LCCs also have historically operated with a simplified business model compared to the legacies; generally employing a point-to-point network structure versus a hub-and-spoke network structure, and normally featuring a single-class cabin onboard their aircraft. Nocella (United) Lit. Dep. 15:25-16:6, June 28, 2023; *see also* Decaire (Southwest) Lit. Dep. 37:23-38:13, June 22, 2023.

36. **LCC Point-to-Point Networks:** A point-to-point network model involves flying nonstop from one city to the next without connecting through a hub airport. Nov. 2, 2023, Tr. Vol. 2, 150:9-18 (Clark/JetBlue) (describing JetBlue as "primarily a point-to-point carrier" versus a hub-and-spoke carrier); *see also* Oct. 31, 2023, Tr. Vol. 2, 85:25-86:19 (Christie/Spirit) (noting with a point-to-point model, passengers get on and off aircraft quickly, "which keeps the relative period of time on the ground lower" than with a hub-and-spoke network); Kirby (Spirit) Lit. Dep. 101:8-12, May 26, 2023.

37. Point-to-point networks can provide a higher airplane utilization rate, favorable for keeping costs down, when considering the costs of operating in and out of airports. Hayes (JetBlue) CID Dep. 35:16-36:2, Jan. 24, 2023.

4. Hybrid Carriers

38. **U.S. Hybrid Carriers:** Hybrid carriers may include JetBlue, Alaska, and Hawaiian. Klein (Spirit) Lit. Dep. 52:23-53:12, June 27, 2023; Wells (Allegiant) Lit. Dep. 40:1-8, June 22, 2023.

39. "Hybrid" and "low-cost carrier" are sometimes used interchangeably in the airline

industry. Klein (Spirit) Lit. Dep. 58:25-59:5, June 27, 2023; *see also* Nov. 3, 2023, Tr. Vol. 2, 139:1-7 (Klein/Spirit), discussing Tr. Ex. 334 at -859 (identifying in a 2021 Spirit Board deck hybrid carriers and ULCCs, but not LCCs, and identifying JetBlue and Alaska as hybrid carriers); Bartolotta (Spirit) Lit. Dep. 69:10-15, June 13, 2023 (noting "low-cost carrier" can be a misnomer and describing JetBlue as a hybrid).

40. **Hybrid business model tends to mimic the legacies:** Hybrid carriers may also be understood as *distinct* from LCCs in that they offer a different class of service on their aircraft whereas LCCs historically offer one class of service. For example, Alaska and Hawaiian both have a first-class product and JetBlue has a Mint product, which is available in certain markets. Christie (Spirit) Lit. Dep. 53:17-54:11, June 6, 2023.

41. United's Chief Commercial Officer, Andrew Nocella, has declined to characterize JetBlue as an LCC, saying their business model seems "somewhat muddled" as "in recent years they also increasingly have tendencies that mimic the legacy carriers." Nocella (United) Lit. Dep. 19:17-20:11, June 28, 2023.

42. And in a July 2021 Board of Directors presentation, American described JetBlue not as an LCC (a category they defined as occupied solely by Southwest), but as a "niche carrier" that has a more full-service offering like a legacy carrier. Tr. Ex. 189 at -036.

43. JetBlue has similarly referred to itself not as an LCC, but as a "value-focused carrier" with revenue premiums over low-cost carriers like Southwest. Nov. 6, 2023, Tr. Vol. 1, 7:7-21 (Hayes/JetBlue), discussing Tr. Ex. 615 at -879.

44. In this way, and as discussed further, *infra* Part II.F.2, JetBlue's business model appears to be in flux as, in Spirit's assessment, JetBlue appears to be "[m]oving [a]way [f]rom the LCC [b]usiness [m]odel" and increasingly operating like a legacy carrier. Tr. Ex. 340 at -

396-97.

5. Ultra-Low-Cost Carriers

45. **U.S. ULCC carriers:** "ULCC" is typically used to describe Spirit, Frontier Airlines ("Frontier"), Avelo Airlines ("Avelo"), Allegiant Air ("Allegiant"), and Sun Country Airlines ("Sun Country"). Nov. 2, 2023, Tr. Vol. 2, 110:15-25 (Clark/JetBlue); Nov. 3, Tr. Vol. 1, 8:22-23, 9:l-8 (Yealy/Avelo); Oct. 31, 2023, Tr. Vol. 2, 75:19-76:4 (Christie/Spirit); Nov. 14, 2023, Tr. Vol. 2, 123:10-16 (Wells/Allegiant); *but see* Beck (Delta) 30(b)(6) Lit. Dep. 12:15-19, July 12, 2023 ([redacted]).

46. Although some industry participants have also classified Breeze, a new domestic airline, as a ULCC, *see* Nov. 6, 2023, Tr. Vol. 1, 54:25-55:5 (Hayes/JetBlue) (including Breeze as a ULCC); Nov. 9, 2023, Tr. Vol. 2, 157:4-10 (Friedman/JetBlue) (same), Breeze refers to itself as a "hybrid" between ULCCs and LCCs. Neeleman (Breeze) Lit. Dep. 17:22-18:5, 19:3-9, July 17, 2023. Spirit witnesses also testified that Breeze falls between an LCC and a ULCC. Oct. 31, 2023, Tr. Vol. 2, 76:7-14 (Christie/Spirit) (suggesting Breeze should not necessarily be categorized as a ULCC because they "have some elements of [the ULCC] business model" but they also have some more premium products); Klein (Spirit) Lit. Dep. 44:21-45:21, June 27, 2023 (noting it is too soon to say whether Breeze is going to adopt a ULCC model and that Breeze has not followed the "high-utilization" model as it has multiple aircraft types and does not have a high-density seating model).

47. **ULCC Business Model:** ULCCs' costs are typically lower than those of all other types of airline carriers, including legacy carriers, LCCs, and hybrids. Nov. 14, 2023, Tr. Vol. 1, 39:12-40:8, 40:15-19 (Biffle/Frontier); Nov. 14, 2023, Tr. Vol. 2, 123:10-16 (Wells/Allegiant); Kirby (Spirit) Lit. Depo. 15:9-17, May 26, 2023.

48. Spirit, Allegiant, and Frontier, for example, have lower unit operating costs than

other airlines, including JetBlue. Oct. 31, 2023, Tr. Vol. 2, 83:15-84:2 (Christie/Spirit), discussing Tr. Ex. 347 at -960.

49. An important component of the ULCC model, at least for the larger ULCCs, is having a high utilization of assets to spread out costs, including high aircraft utilization and high aircraft density/gauge (*i.e.*, more seats per comparable aircraft). Nov. 14, 2023, Tr. Vol. 1, 39:12-40:8 (Biffle/Frontier); *see also* Nov. 7, 2023, Tr. Vol. 2, 88:23-89:4 (Kirby/Spirit) (discussing the importance of high utilization to Spirit's ULCC model); Oct. 31, 2023, Vol. 2, 84:25-85:24 (Christie/Spirit), discussing Tr. Ex. 347 at -961 (illustrating some of the ways in which Spirit keeps its costs low); Christie (Spirit) Lit. Dep. 82:8-18, June 6, 2023 (noting ULCCs, on average, operate higher density aircraft than LCCs and legacy carriers).

50. ULCCs also typically operate point-to-point networks, instead of a hub networks, which can help ULCCs operate their aircraft for more hours per day than other types of airlines. Oct. 31, 2023, Tr. Vol. 2, 85:25-86:10 (Christie/Spirit), discussing Tr. Ex. 347 at -961.

51. Spirit, distinct from other ULCCs, including Allegiant, uses some "elements of [a] hub structure . . . in certain cities" to compete more aggressively. Oct. 31, 2023, Tr. Vol. 2, 86:20-87:8 (Christie/Spirit) (noting Spirit structures its network in and out of Fort Lauderdale with a "hub-type structure" and has "some limited hub-type structure . . . in Orlando and Houston."); Nov. 14, 2023, Tr. Vol. 2, 136:15-17 (Wells/Allegiant); Kirby (Spirit) Lit Dep. 102:7-13, 104:23-105:2, May 26, 2023; *see also* Nov. 14, 2023, Tr. Vol. 1, 53:10-12 (Biffle/Frontier) (noting Frontier has fewer connecting flights than Spirit in its network).

52. ULCCs may employ different tactics to keep costs low. For example, Allegiant typically operates out of "secondary or less well-served airports," which are often lower-cost than primary or more popular airports. Nov. 14, 2023, Tr. Vol. 2, 123:25-124:2, 124:8-11

(Wells/Allegiant); *see also* Nov. 7, 2023, Tr. Vol. 2, 119:8-22 (Kirby/Spirit).

53. In addition to a high (or higher) utilization of assets, ULCCs offer an unbundled product, which contributes to lowering costs. Oct. 31, 2023, Tr. Vol. 2, 89:12-90:10 (Christie/Spirit).

54. By lowering their operating costs ULCCs, like Spirit, have the flexibility to operate profitably at lower fare levels. Oct. 31, 2023, Tr. Vol. 2, 102:18-21 (Christie/Spirit).

55. **ULCC business model benefits customers:** And, on average, ULCCs, including Spirit, do pass on their lower costs in the form of lower fares to their customers compared to the fares offered by other airlines. Kirby (Spirit) Lit. Dep. 15:24-16:15 (noting Spirit's fares are, on average, lower than those of legacies and LCCs), May 26, 2023; *see also* Nov. 3, 2023, Tr. Vol. 1, 66:18-24 (Klein/Spirit) (noting Spirit's fares are, on average, lower than those of legacy airlines); Tr. Ex. 340 at -398 (illustrating ULCC fares are, on average, lower than those of other carriers).

56. ***Competition from ULCCs causes other airlines to lower their fares.*** By entering with lower fares, ULCCs also often cause legacy carriers and non-legacy carriers, including JetBlue, to lower their fares. Nov. 14, 2023, Tr. Vol. 1, 41: 5-20, 42:20-22 (Biffle/Frontier) (observing that ULCCs typically lower fares by 30 to 50 percent and that JetBlue has lowered its fares in response to another ULCC entering); Nov. 7, 2023, Tr. Vol. 2, 92:17-22, 94:8-18 (Kirby/Spirit) (noting other airlines generally reduce their fares upon Spirit's entry); *see also* Tr. Ex. 378 at -251 (noting that in two of JetBlue's focus cities, Fort Lauderdale and Orlando, "heavy ULCC competition has brought significant fare depression"); Tr. Ex. 405 at -205 (describing ULCCs as gaining market share against JetBlue in markets to and from San Juan, Puerto Rico, and that "pricing pressure" was "likely to ensue" as a result); Tr. Ex. 415 at -855

(discussing in a 2019 JetBlue quarterly network review that JetBlue's Fort Lauderdale/Miami markets were underperforming due in part to "increased pricing pressure from ULCCs"); Tr. Ex. 15 at -389, -441 [redacted]); Nov. 28, 2023, Tr. Vol. 1, 35:23-36:5 (Nocella/United) (noting United's strategy for competing against ULCCs is to match their fares dollar for dollar); Nocella (United) Lit. Dep. 42:5-43:3, June 28, 2023 ([redacted]).

57. On the flip side, when a ULCC leaves a market, this may result in other carriers increasing fares and a reduction in market size. *See, e.g.*, *infra* Part II.D.7 (regarding JetBlue's finding that when Spirit exited routes, the average fare went up and passenger volume went down).

58. ***ULCCs allow more people to fly.*** By offering lower fares than other airlines on a route (to the extent there is competition on that route), ULCCs can often stimulate *more* passenger demand than might be stimulated by the entry of another carrier, including JetBlue. Nov. 14, 2023, Tr. Vol. 1, 41:12-14, 42:13-19 (Biffle/Frontier); *see also infra* Part II.D.7 (describing Spirit's effect on the markets it enters). This means more people are able to fly who may not have otherwise been able to do so or do so as often. Nov. 14, 2023, Tr. Vol. 1, 41:5-14 (Biffle/Frontier); Nov. 3, 2023, Tr. Vol. 1, 11:12-20 (Yealy/Avelo) (explaining "customers have responded very well to the ultra-low-cost business model" and that it "enables a portion of the population access to air travel that they may otherwise have not had access to"); Klein (Spirit) Lit. Dep. 46:24-47:1, 47:3-8, June 27, 2023 (noting ULCCs "help people fly that may not otherwise always be able to fly or [fly] as often"); *see also infra* Part II.D.4 (describing how

Spirit's low fares enable price-sensitive customers to fly); *infra* Part II.D.7 (describing passengers' increased ability to fly after Spirit enters a route).

59. **__ULCC growth__:** ULCCs have been growing faster than both legacy carriers and LCCs over the last five years; and both ULCCs and LCCs have been growing faster than legacy carriers. Oct. 31, 2023, Tr. Vol. 2, 114:9-115:13 (Christie/Spirit); *see also supra* Part I.A. (discussing Spirit's growth).

B. Network Planning In The Airline Industry

1. A carrier's network is made up of individual origin-and-destination pair markets

60. As John Kirby, Spirit's Vice President of Network Planning, explained, an airline's network is made up of origin-and-destination pairs, *i.e.*, markets or routes, as well as frequency of service on a given route. Nov. 7, 2023, Tr. Vol. 2, 83:20-84:10 (Kirby/Spirit); *accord* Nov. 8, 2023, Tr. Vol. 2, 111:7-10 (Hillyard/JetBlue) (agreeing JetBlue uses "route" and "market" interchangeably).

61. When choosing to enter a market, all carriers look at whether there is demand in a particular market and, for ULCCs, whether additional demand might be stimulated. *See* Nov. 14, 2023, Tr. Vol. 2, 130:8-14 (Wells/Allegiant); Nov. 7, 2023, Tr. Vol. 2, 92:9-16 (Kirby/Spirit) ("[W]e generally look for markets that are large that, again, can stimulate demand.").

62. Distinct from route entry and exit, frequency adjustments can occur monthly as a part of the capacity planning process. Nov. 8, 2023, Tr. Vol. 1, 53:2-23 (Kirby/Spirit). These frequency changes may also be made based on seasonal demand in a given market. Nov. 9, 2023, Tr. Vol. 2, 124:11-125:4 (Friedman/JetBlue); *see also* Nov. 14, 2023, Tr. Vol. 1, 15:11-16:2 (Friedman/JetBlue) (acknowledging that only 50 of the 718 schedule changes observed by JetBlue made by itself and other U.S. airlines over the course of about 10 months were either

exits or entries to a route), discussing Tr. Ex. 697.

2. Route decisions are strategic and carrier-specific

63. A narrow, route-level view of profitability does not always dictate route frequency and asset allocation. When determining whether to enter or expand in a route, carriers will also analyze how the route fits into their overall network strategy. Nov. 8, 2023, Tr. Vol. 2, 108:6-13 (Kirby/Spirit); Nov. 2, 2023, Tr. Vol. 1, 58:20-25 (Clark/JetBlue) (agreeing that JetBlue considers "operational feasibility" when considering starting service on a new route, which includes considering whether JetBlue can reliably serve the route given the airline's current fleet and existing network); Nov. 14, 2023, Tr. Vol. 1, 57:21-58:5 (Biffle/Frontier) (explaining Frontier will consider whether it can "safely and reliably" operate a new route and whether it will be a "good operational fit"). This includes a determination of the availability of aircraft to supply that route, and, if applicable, the availability of pilots. Nov. 8, 2023, Tr. Vol. 2, 108:14-109:3 (Kirby/Spirit).

64. JetBlue, for example, will consider the route's "strategic importance" to the airline, including the extent to which the new route would improve JetBlue's relevance to its customers. Nov. 2, 2023, Tr. Vol. 1, 59:16-22 (Clark/JetBlue); Nov. 6, 2023, Tr. Vol. 1, 70:1-16 (Hayes/JetBlue).

65. Indeed, JetBlue did not reduce its frequencies of service on Boston "business routes" when the profitability may have justified it because additional flights were needed to retain corporate customers. Friedman (JetBlue) Lit. Dep. 186:3-5, 186:7-25, June 21, 2023.

66. And, as part of JetBlue's analysis for a combined Spirit/JetBlue network plan, JetBlue identified some Spirit routes the combined entity might continue to fly, even if unprofitable, as they would contribute to JetBlue's "focus city strategy" and efforts to "build[] relevance" in an area. Nov. 9, 2023, Tr. Vol. 1, 36:15-37:6 (Friedman/JetBlue) ("[S]ometimes

[JetBlue] w[ill] keep an individually underperforming route that might contribute to the 'greater good[.]'"); Nov. 9, 2023, Tr. Vol. 2, 123:25-124:7 (Friedman/JetBlue) (explaining JetBlue's network strategy is tied to its focus-city strategy of aiming to build out the right routes for the population of the particular focus city); *see also supra* Part I.B (explaining the concept of "focus cities").

67. Airlines also frequently prioritize "connecting the dots" or connecting "spokes" of their existing service. *See, e.g.*, Neeleman (Breeze) Lit. Dep. 223:4-9, July 17, 2023 ("connecting the dots" is the "number-one focus" for Breeze). It can be difficult for an airline to build awareness of its product in a new city, which makes launching routes that touch on an existing spoke helpful. Nov. 3, 2023, Tr. Vol. 1, 26:23-27:17 (Yealy/Avelo); Nov. 7, 2023, Tr. Vol. 2, 120:12-19 (Kirby/Spirit) (describing "dot connecting" as easier for route entry); *see also infra* Part VII.A.4.

68. For example, since at least 2009, JetBlue has not entered a route on which it does not already serve at least one endpoint. Nov. 2, 2023, Tr. Vol. 1, 59:2-7 (Clark/JetBlue).

69. Likewise, Avelo has not entered a route on which it does not already serve at least one endpoint in over two years. Nov. 3, 2023, Tr. Vol. 1, 28:1-15 (Yealy/Avelo).

70. Similarly, many airlines structure their networks such that most routes originate from their hubs, base cities, or focus cities (however they characterize their biggest cities). For example, over 90 percent of Avelo's flights originate from Avelo's base airports. Nov. 3, 2023, Tr. Vol. 1, 18:6-12, 19:8-11 (Yealy/Avelo). And approximately 90.6 percent of 2022 capacity for Sun Country, as measured by ASMs, has Minneapolis, Minnesota, as the origin or destination. Tr. Ex. 72 at -321 ("Our business is significantly tied to and consolidated in our main hub in Minneapolis-St. Paul"); Kirby (Spirit) CID Dep. 132:13-22, Jan. 13, 2023 (describing Sun

Country as Minneapolis-focused compared to Spirit, which has "more of a national presence"). In addition, as noted *supra* Part I.B, over 90 percent of JetBlue's routes touch one of its focus cities. Nov. 1, 2023, Tr. Vol. 2, 148:15-19 (Clark/JetBlue). Frontier also considers whether it can serve a route "from [its] base" when analyzing whether it will add a route. Nov. 14, 2023, Tr. Vol. 1, 57:21-58:5 (Biffle/Frontier) (noting that, if a route is added "from a base, it will be much easier to serve and start service versus if it's not from a base").

3. <u>Scheduling and timing factors in network planning</u>

71. When optimizing their networks, carriers also must consider the time of day at which routes should or even can be flown, *i.e.*, the flight schedule. *See* Kirby (Spirit) 30(b)(6) CID Dep. 34:6-9, Jan. 12, 2023. For example, carriers must consider the takeoff- and landing-time restrictions that exist at certain airports in the United States and other countries. *See infra* Part VII.B.2-3; *see also* Nov. 8, 2023, Tr. Vol. 1, 32:24-34:12 (Kirby/Spirit).

72. In addition, airlines that operate connecting flights, whether through hubs, focus cities, or bases, must ensure flights take off and land within the appropriate bank. Nocella (United) Lit. Dep. 16:7-21, June 28, 2023 (explaining that, with a hub-and-spoke model, carriers must schedule aircraft to "arrive in groups that we refer to as banks" to enable "passengers . . . to efficiently connect between all the aircraft on the ground and then all . . . depart at a similar time"). For example, although Spirit's network "is predominately point-to-point," Spirit schedules certain routes such that there is connecting optionality out of Fort Lauderdale. Nov. 7, 2023, Tr. Vol. 2, 89:21-25 (Kirby/Spirit); Oct. 31, 2023, Tr. Vol. 2, 86:20-87:8 (Christie/Spirit).

73. Carriers will also consider whether a route can be flown overnight as a "red-eye" flight, and thus generate money during the late-evening/early-morning hours, or whether it will have to park aircraft at an airport. Nov. 9, 2023, Tr. Vol. 2, 151:7-16 (Friedman/JetBlue).

74. In addition, non-Spirit ULCCs, like Allegiant, Avelo, and Sun Country, schedule

their aircraft and flight crews to return to their bases each night. Nov. 3, 2023, Tr. Vol. 1, 12:24-13:17; 18:21-19:7 (Yealy/Avelo). Frontier is also currently transitioning its schedule to do the same. Nov. 14, 2023, Tr. Vol. 1, 48:21-49:6 (Biffle/Frontier) (noting that today, 50 percent of Frontier's routes are out and back to Frontier's bases and that Frontier plans to transition to 90 to 100 percent out-and-back flying from bases by mid-2024).

C. Airlines Have Faced Obstacles To Growth Post-Pandemic

75. The airline industry is a volatile industry that faces "a number of different inputs . . . that can influence [a carrier's] profitability," even in normal years. Nov. 1, 2023, Tr. Vol. 2, 105:4-16 (Christie/Spirit).

76. The COVID-19 pandemic, however, had a "very destructive impact on transportation and the U.S. aviation industry." Nov. 1, 2023, Tr. Vol. 1, 21:2-7 (Christie/Spirit).

77. Because of the COVID-19 pandemic, which was "extremely disruptive to all airlines," it was "virtually inconceivable that an airline would be profitable in 2020" and in "2021, the pandemic was very much still with us." Nov. 1, 2023, Tr. Vol. 2, 95:23-96:6 (Christie/Spirit); Nov. 1, 2023, Tr. Vol. 1, 30:17-31:4 (Christie/Spirit); *see also* Nov. 7, 2023, Tr. Vol. 1, 40:7-41:4 (Gardner/Spirit) (noting Spirit was profitable every year, on an annual basis, from 2010 through 2019, but not profitable since the COVID-19 pandemic began in 2020).

78. The extreme impact of COVID-19 on the airline industry has also meant that many industry participants, including Defendants, consider 2019 to be the last "normal" or "clean" year for purposes of benchmarking and forecasting. Nov. 9, 2023, Tr. Vol. 2, 150:14-19 (Friedman/JetBlue); Nov. 1, 2023, Tr. Vol. 2, 96:11-97:12 (Christie/Spirit).

79. For example, JetBlue used 2019 data for its revenue synergies model that was presented to JetBlue's Board and for the "New" Combined Network Plan JetBlue finished in May 2023 (*see infra* Part VII.D.4), because JetBlue deemed data post-2019 to be "tainted" by the

COVID-19 pandemic. Nov. 9, 2023, Tr. Vol. 1, 71:6-22, 72:5-13 (Friedman/JetBlue), discussing Tr. Ex. 362 at -928.

80. Initially, coming out of the COVID-19 pandemic, low-fare leisure demand returned more rapidly than business travel. Tr. Ex. 347 at -968; *id.* at -980 (showing that revenue had recovered for Spirit and other airlines that focus on "Leisure/VFR" more than airlines that focus on "Business/International"); *see also id.* at -968 ("As seen during the Great Financial Crisis . . . and COVID, lower-fare leisure / VFR ["Visiting Friends and Relatives"] travel is the most resilient and quickest to recover[.]"); Oct. 31, 2023, Tr. Vol. 2, 94:1-4 (Christie/Spirit) (defining "VFR").

81. Spirit noted to investors in November 2022 that its "revenue recovery has surpassed other airlines" coming out of the COVID-19 pandemic. Tr. Ex. 347 at -980.

82. But, more recently, some airlines have returned to profitability while others have not. Nov. 1, 2023, Tr. Vol. 1, 25:16-26:10 (Christie/Spirit).

83. According to Mr. Christie, this result is largely due to demand shifting to more premium travel, primarily served by the legacy airlines, as "economic inflationary changes . . . have begun to pinch [] lower-end consumer[s] more [than premium consumers] . . . they're not buying as much of the product as they were before because their own household expenses are higher." Nov. 1, 2023, Tr. Vol. 1, 33:6-34:9 (Christie/Spirit). Mr. Christie also noted that demand for transatlantic and transpacific travel increased in 2023, benefiting carriers that offered that service. Nov. 2, 2023, Tr. Vol. 1. 45:8-46:16 (Christie/Spirit).

84. In addition to the industry issues described below, since the COVID-19 pandemic, the price of fuel has "gone up dramatically." Nov. 1, 2023, Tr. Vol. 1, 31:13-33:5 (Christie/Spirit).

1. Aircraft delays are constraining growth

85. Airbus and Boeing are both experiencing significant delivery delays. Nov. 9, 2023, Tr. Vol. 1, 80:22-81:1 (Friedman/JetBlue), discussing Tr. Ex. 363 at -847; *see also*; Bendoraitis (Spirit) Lit. Dep. 308:19-310:1, 310:8-9, 310:11-12, June 14, 2023 (explaining Airbus has supply chain issues); Nocella (United) Lit. Dep. 91:2-92:12, June 28, 2023.

86. United's Chief Commercial Officer, Mr. Nocella, described aircraft delays as a constraint to growth for the wider industry. Nocella (United) Lit. Dep. 91:2-92:12, June 28, 2023; *see also* Znotins (American) Lit. Dep. 110:9-20, June 23, 2023 ("[I]n the next two years, aircraft availability is limited[.]").

87. Spirit did not stop taking aircraft deliveries during the COVID-19 pandemic, Nov. 1, 2023, Tr. Vol. 2, 110:2-15 (Christie/Spirit), but is also currently facing Airbus delivery delays, Nov. 1, 2023, Tr. Vol. 2, 113:8-114:22 (Christie/Spirit).

88. JetBlue continues to face aircraft delivery delays from Airbus, Nov. 16, 2023, Tr. Vol. 2, 133:4-6 (Hurley/JetBlue), and the overwhelming majority of JetBlue's aircraft orders for 2023 to 2027 will be impacted. Hurley (JetBlue) 30(b)(6) Lit. Dep. 20:6-10, June 21, 2023.

89. JetBlue has also, historically, preferred to purchase rather than lease aircraft. Nov. 3, 2023, Tr. Vol. 2, 171:17-19 (Hayes/JetBlue). But because of the Airbus delays, it would be "very challenging" for JetBlue to purchase additional aircraft from Airbus until 2029, if not 2030. *Id.* at 170:15-22 (Hayes/JetBlue); Nov. 6, 2023, Tr. Vol. 1, 31:11-20 (Hayes/JetBlue).

90. It could take three to four years to acquire aircraft from a leasing company given the "limited availability." Nov. 6, 2023, Tr. Vol. 1, 31:22-32:3 (Hayes/JetBlue) (stating it is "possible you could get an airplane in 2027" from a lessor); *see also* Hayes (JetBlue) Lit. Dep. 97:5-98:5, June 14, 2023. Although sometimes an airline can more quickly acquire aircraft from a lessor, a carrier is at the mercy of the market with respect to pricing and available supply.

Haralson (Spirit) Lit. Dep. 44:8-22, June 7, 2023 (discussing aircraft lessor pricing); Hayes (JetBlue) Lit. Dep. 97:5-98:5, June 14, 2023 (discussing available leased aircraft supply).

2. Air Traffic Control issues are constraining growth

91. During the COVID-19 pandemic, the Federal Aviation Administration ("FAA") let many of its experienced Air Traffic Controllers retire. Kirby (Spirit) 30(b)(6) Lit. Dep. 36:9-37:3, May 26, 2023. When air travel demand returned, Air Traffic Control ("ATC") centers could not support the amount of flying capacity coming into various areas of the United States. *Id.*; Christie (Spirit) Lit. Dep. 48:12-49:2, June 6, 2023; *see also* Nocella (United) Lit. Dep. 91:2-92:12, June 28, 2023.

92. When ATC centers are unable to support scheduled air traffic, it often forces airlines to artificially limit the number of flights operating certain routes to/from affected airports. Kirby (Spirit) 30(b)(6) Lit. Dep. 36:9-24, May 26, 2023; Christie (Spirit) Lit. Dep. 44:2-16, 48:12-49:2, June 6, 2023; *see also* Christie (Spirit) Lit. Dep. 385:10-386:1, June 19, 2023; Hayes (JetBlue) Lit. Dep. 45:24-46:14, June 14, 2023 (discussing requests to reduce flying at New York City metropolitan area airports).

93. Before these ATC requests to reduce flying in certain areas, Spirit had plans to operate more routes to/from the affected regions. Christie (Spirit) Lit. Dep. 49:23-25, 50:2, June 6, 2023.

94. Spirit may be disproportionately affected by ATC issues given the amount of traffic Spirit has entering and exiting affected air space compared to other airlines. Bendoraitis (Spirit) Lit. Dep. 159:16-25, June 14, 2023 (discussing Florida). And Spirit has had to "artificially constrain[] [itself] in a number of geographies to not overwhelm [ATC] operations." Nov. 7, 2023, Tr. Vol. 2, 126:17-23 (Kirby/Spirit).

3. Pilot staffing issues have recently artificially constrained airlines' growth

95. During the COVID-19 pandemic, many legacy airline pilots retired early; when demand came back, legacy airlines scrambled to hire pilots, including other airlines' pilots. Nov. 1, 2023, Tr. Vol. 1, 44:5-45:1 (Christie/Spirit) (describing the "high demand for pilots in the industry" and Spirit "beginning to lose pilots to . . . large network airlines"); Klein (Spirit) Lit. Dep. 360:13-22, June 27, 2023 (confirming that legacy airlines were hiring pilots "to backfill a lot of the retirements that they saw during COVID"); Haralson (Spirit) Lit. Dep. 87:21-88:5, June 7, 2023 (explaining that Spirit's "projected assessment is" its pilots "were leaving for, you know, legacy carriers"); Tr. Ex. 72 at -305.

96. This pilot shortage caused pilot attrition issues for Spirit and other airlines in 2022 and at least the first half of 2023. Klein (Spirit) Lit. Dep. 100:23-101:21, June 27, 2023; [redacted]. In late 2022 and the first half of 2023, pilot attrition was described by Spirit executives as one of, if not the "main driver[s]" of constraints Spirit faced to increasing its utilization. Tr. Ex. 328 at -369; *see also* Bendoraitis (Spirit) Lit. Dep. 280:1-13, June 14, 2023; Christie (Spirit) Lit. Dep. 169:8-25, June 6, 2023; Haralson (Spirit) Lit. Dep. 136:12-18, June 7, 2023.

97. Spirit took several steps to address pilot supply issues, including contractual changes to Spirit's pilot agreement in January 2023. Nov. 1, 2023, Tr. Vol. 1, 44:5-45:1 (Christie/Spirit).

98. By the end of the second quarter of 2023, pilot hiring and attrition were no longer significant constraints on Spirit's operations and Spirit projected that, excluding aircraft grounded due to engine issues, it would be back to full utilization by the fourth quarter of 2023. Tr. Ex. 341 at -964 (noting in Spirit's Second Quarter 2023 Earnings Call that, "[w]ith pilot attrition no longer being a drag on our utilization by the fourth quarter, we can now isolate the

AOG [“aircraft on ground,” or disabled aircraft] issues and look at the core airline. The core airline that is excluding AOGs, should be back to full utilization by Q4”).

4. Engine issues are constraining growth

99. Spirit and other airlines purchase their engines from Pratt & Whitney, which has had reliability issues since 2016. Nov. 1, 2023, Tr. Vol. 1, 40:16-41:18 (Christie/Spirit).

100. For example, since at least the first quarter of 2023, there have been a handful of engine issues relating to the Airbus new engine options (“NEOs”), Nov. 1, 2023, Tr. Vol. 2, 104:11-13 (Christie/Spirit), which Spirit, JetBlue, Frontier, and others use in their fleets. Klein (Spirit) Lit. Dep. 105:6-8, 105:10-106:2, June 27, 2023; *see also* Nov. 6, 2023, Tr. Vol. 2, 101:3-10 (Hayes/JetBlue); Nov. 14, 2023, Tr. Vol. 1, 37:12-17, 47:10-48:1 (Biffle/Frontier).

101. Most recently, Pratt & Whitney (and its parent company, Raytheon), announced a new issue with the powder metal used to manufacture the geared turbo engine fans (“GTFs”) of the NEOs that requires accelerated engine inspections. Nov. 6, 2023, Tr. Vol. 2, 162:10-19 (Gardner/Spirit), discussing Tr. Ex. 633 at -561-62.

102. The GTF issue has thus forced airlines, including Spirit and many others, to ground aircraft in their fleets to accommodate these inspections. Nov. 1, 2023, Tr. Vol. 2, 108:8-11 (Christie/Spirit), discussing Tr. Ex. 341 at -964; *see also* Klein (Spirit) Lit. Dep. 105:6-8, 105:10-106:2 at 105:22-24, June 27, 2023 (the engine issues are “not just a Spirit issue” but are “an industry issue for – anyone that’s a Pratt & Whitney neo engine customer”); Christie (Spirit) Lit. Dep. 46:13-20, 47:1-3, June 6, 2023.

103. The most recent GTF NEO issue likewise affects any U.S.-based carrier that operates the NEO engine variant from Pratt & Whitney, which includes JetBlue, Hawaiian, Frontier, and Spirit. Nov. 1, 2023, Tr. Vol. 1, 43:9-44:4 (Christie/Spirit); Nov. 14, 2023, Tr. Vol. 1, 37:1-5, 37:12-17 (Biffle/Frontier); Nov. 6, 2023, Tr. Vol. 2, 101:3-10 (Hayes/JetBlue); Tr. Ex.

141 at -084.

104. JetBlue, for example, is expecting a lower growth profile in 2024 due, in part, to GTF engine issues. Nov. 16, 2023, Tr. Vol. 2, 132:22-133:3 (Hurley/JetBlue); *id.* at 132:19-21 (noting JetBlue is expecting its capacity to decrease for first quarter of 2024 year-over-year). The number of grounded aircraft will increase for JetBlue in 2024. Nov. 16, 2023, Tr. Vol. 2, 133:18-23 (Hurley/JetBlue).

105. **GTF Engine Issues Have Caused Recent Spirit Service Reductions:** Spirit has represented that it is particularly impacted because it flies all aircraft within the Airbus A320 family that use the affected engines. Nov. 1, 2023, Tr. Vol. 1, 43:9-44:4 (Christie/Spirit). Specifically, because of the recent GTF issue, Spirit has recently been forced to take measures to exit routes, suspend service on routes temporarily, or convert year-round routes to seasonal routes. Nov. 8, 2023, Tr. Vol. 1, 59:7-17 (Kirby/Spirit). Many of these routes, including routes to/from Puerto Vallarta and Cabo, Mexico; Bucaramanga, Colombia; and Aguadilla and Ponce, Puerto Rico, are routes Spirit merely suspended or made seasonal due to the GTF issues and to which Spirit "hope[s] to return to at some point in the future." Nov. 8, 2023, Tr. Vol. 1, 73:3-25. Spirit has no plans, however, to exit many of its overlap routes with JetBlue, especially some of the largest routes in terms of passengers served year-round. *See* Nov. 7, 2023, Tr. Vol. 2, 110:18-113:25 (Kirby/Spirit).

106. **Pratt & Whitney Has Pledged To Compensate Affected Airlines:** Given the significance of the aircraft groundings, Pratt & Whitney has publicly stated its intent to make airlines "whole" for the damage caused by the GTF issues. Nov. 1, 2023, Tr. Vol. 2, 108:23-109:17 (Christie/Spirit). And in fact, Spirit told investors in its Second Quarter 2023 Earnings Call that it anticipated Pratt & Whitney's make-whole promise would "neutralize[]" Spirit's

aircraft on ground ("AOG") issues stemming from the faulty engines. Tr. Ex. 341 at -964; Nov. 1, 2023, Tr. Vol. 2, 108:23-109:17 (Christie/Spirit).

107. JetBlue is also in discussions with Pratt & Whitney to compensate JetBlue for the impact of the GTF engine issues. Nov. 16, 2023, Tr. Vol. 2, 133:24-134:2 (Hurley/JetBlue). And JetBlue's CFO has testified that, based on Pratt & Whitney's public statements, she believes Pratt & Whitney will "do right" by its customers in terms of providing compensation. Nov. 16, 2023, Tr. Vol. 2, 134:3-7 (Hurley/JetBlue).

D. Spirit Is An Airline Industry Disruptor, Even Among ULCCs

108. As noted, Spirit is the largest ULCC in the United States with respect to ASMs and fleet size. *Supra* Part I.A.

109. In addition to being the largest ULCC, Spirit is also seen by "many in the industry" as a "disruptor," having "chang[ed] the market versus what had existed prior to [ ] Spirit's entry." Znotins (American) Lit. Dep. 198:10-23, June 23, 2023.

1. Spirit has innovated the U.S. airline industry with respect to its unbundled product

110. Spirit pioneered the ULCC business model in the United States, Kirby (Spirit) 30(b)(6) CID Dep. 32:8-9, Jan. 12, 2023, and was the first airline to introduce an unbundled fare product in the United States, Oct. 31, 2023, Tr. Vol. 2, 90:8-10 (Christie/Spirit); *see also* Christie (Spirit) Lit. Dep. 132:10-134:2, June 6, 2023; Kirby (Spirit) Lit. Dep. 18:18-23, May 26, 2023.

111. Spirit's ULCC model has been successful for Spirit, Klein (Spirit) Lit. Dep. 283:5-7, 283:9-20, June 27, 2023, and in Spirit's 2022 10-K, Spirit touted its "Resilient Business Model and Customer Base" as one of Spirit's "Strengths," enabling Spirit to "maintain[] profitability or be[] impacted to a lesser degree than most of our competitors during volatile economic periods," Tr. Ex. 39 at -447-48 (listing "Resilient Business Model and Customer Base"

under Spirit's "Strengths").

112. Spirit did not revise these statements when disclosing competitive risks in subsequent U.S. Securities and Exchange Commission ("SEC") filings in 2023 nor in its subsequent investor calls. Nov. 1, 2023, Tr. Vol. 2, 98:25-99:14, 113:8-115:1 (Christie/Spirit), discussing Tr. Ex. 73 at -552 (confirming no new risk factors other than the Pratt & Whitney GTF and NEO engine issues discussed in Spirit's 2022 Form 10-K); Nov. 1, 2023, Tr. Vol. 2, 115:2-19 (Christie Spirit), discussing Tr. Ex. 633 at -578 (confirming no new risk factors disclosed in Spirit's 2023 Form 10-Q).

113. Because of Spirit's success, and the recognition by the rest of the U.S. airline industry that there "is a marketplace for that type of [unbundled] product," most other U.S. domestic airlines have copied elements of Spirit's unbundled model. Christie (Spirit) Lit. Dep. 132:14-134:2, June 6, 2023; *see also* Nov. 14, 2023, Tr. Vol. 1, 41:21-25 (Biffle/Frontier) (noting legacy carriers introduced basic economy in response to ULCCs' growth); Klein (Spirit) Lit. Dep. 71:12-72:9, June 27, 2023 (noting the success of Spirit's unbundled product is validated by the fact that "[n]early all other airlines . . . have added aspects to their business model to mimic the Spirit business model because they have seen the success of the Spirit business model"); Nocella (United) Lit. Dep. 140:23-141:7, June 28, 2023 (highlighting that when United introduced its basic economy product, it was in response to Spirit and Frontier, not JetBlue); Nov. 28, 2023, Tr. Vol. 1, 36:2-8, 36:23-37:18 (Nocella/United) (explaining that basic economy is part of United's competitive strategy with ULCCs); Beck (Delta) 30(b)(6) Lit. Dep. 19:2-17, July 12, 2023 ([redacted]).

114. Other domestic airlines offering some type of basic economy product include United, Delta, American, and JetBlue. Nov. 1, 2023, Tr. Vol. 1, 11:15-21 (Christie/Spirit)

(noting that apart from ULCCs and Southwest, "most airlines" have a "basic economy" type product); Nov. 3, 2023, Tr. Vol. 2, 145:10-19 (Klein/Spirit) (agreeing that American, Delta, and United have each offered basic economy for several years); Klein (Spirit) Lit. Dep. 72:10-73:2, June 27, 2023.

115. Of these airlines, JetBlue was the last to offer a basic-economy-type product. Nov. 2, 2023, Tr. Vol. 1, 11:10-13 (Clark/JetBlue) (noting JetBlue introduced Blue Basic in November 2019); Nov. 3, 2023, Tr. Vol. 2, 169:12-18 (Hayes/JetBlue); *see also infra* Part V.B.1.b (regarding JetBlue's rollout of Blue Basic).

116. JetBlue's Head of Revenue and Planning, David Clark, noted JetBlue decided to pursue a basic fare product, "Blue Basic," to appeal to price-sensitive customers, Nov. 2, 2023, Tr. Vol. 1, 20:24-21:19 (Clark/JetBlue), and thus compete with the unbundled fare options offered by other airlines, including Spirit, Nov. 2, 2023, Tr. Vol. 1, 11:17-12:7 (Clark/JetBlue); *see also* Hayes (JetBlue) Lit. Dep. 54:7-17, June 14, 2023 (crediting the ULCCs, including Spirit, with driving legacy airlines and JetBlue to introduce different fare bundles).

117. Mr. Clark also explained that moving to a more unbundled "customer choice model" would enable more customers to fly who "couldn't afford to fly" and give customers "a lot more ability to select the attributes they value." Nov. 2, 2023, Tr. Vol. 1, 24:13-26:4 (Clark/JetBlue), discussing Tr. Ex. 651 at -958.

118. Unlike Spirit's unbundled product, however, customers of JetBlue's Blue Basic product assume the costs of Wi-Fi, snacks, non-alcoholic drinks, and T.V. in every single fare. Nov. 3, 2023, Tr. Vol. 2, 160:8-17 (Hayes/JetBlue). This is also true for customers of legacy carriers' basic economy products. *See, e.g.*, Tr. Ex. 130 at -796 (noting that, for United's basic economy product, all customers assume the costs of snacks and entertainment); Beck (Delta)

30(b)(6) Lit. Dep. 150:13-151:21, July 12, 2023 ([redacted]).

119. Although other airlines now offer basic economy products, Spirit still operates at a much lower cost structure than other airlines, including JetBlue, allowing Spirit to "make money on low fares where [Spirit's] competitors struggle in that regard." Kirby (Spirit) Lit. Dep. 142:5-18, May 26, 2023; *see also id.* at 117:22-118:17 (explaining Spirit's low-cost structure allows Spirit to be patient and wait out a competitor's "over-the-top" low-fare response to Spirit's entry); Nov. 3, 2023, Tr. Vol. 2, 151:23-25 (Hayes/JetBlue) (noting JetBlue "has a higher unit cost structure than Spirit").

120. In addition, airlines may not always offer a basic economy fare or offer it consistently. For example, because United aims to "maximiz[e] the value that it's able to capture from . . . seats on the[ir] aircraft," the availability of United's basic economy product varies up and down based on the demand for a particular flight—if demand is extremely strong, there are fewer basic economy seats available. Nov. 28, 2023, Tr. Vol. 1, 34:13-35:8 (Nocella/United); *see also id.* at 40:20-24 (agreeing that United does not reserve a certain number of seats for basic economy; if it can sell seats at a higher price, it will); *id.* at 34:9-16 (agreeing there is no physical difference of United's basic economy versus main cabin seats). [redacted] Nocella (United) Lit. Dep. 183:21-184:6, June 28, 2023; *see also* Nov. 28, 2023, Tr. Vol. 1, 40:4-9 (Nocella/United) (agreeing that other legacy carriers besides United will also alter their basic economy offerings "depending on their business judgment").

121. American similarly limits the number of basic economy fares on a flight as part of

its revenue management strategy, with the range of seats available for basic economy varying from flight to flight. Znotins (American) Lit. Dep. 121:19-21, 122:3-9, June 23, 2023. In fact, American withdrew basic economy entirely from certain markets in which it was competing with Southwest. Nov. 28, 2023, Tr. Vol. 1, 39:24-35:3 (Nocella/United), discussing Tr. Ex. 283 at -.024.

122. As such, while other airlines may provide some seats at a lower price, they also offer more expensive premium products as well. *See, e.g.*, Nov. 28, 2023, Tr. Vol. 1, 33:5-33:25 (Nocella/United) (noting United plans to increase the availability of premium seats by 75 percent); Beck (Delta) 30(b)(6) 14:15-25, 15-2-3, July 12, 2023 ([redacted]).

2. Spirit has innovated the domestic airline industry in terms of airline technology and access

123. Spirit has not only been a leading force in the U.S. airline industry in terms of innovating the unbundled product, Kirby (Spirit) Lit. Dep. 18:24-19:2, May 26, 2023, but also in innovating airline technology and access, Kirby (Spirit) CID Dep. 34:18-35:13, Jan. 13, 2023, discussing Tr. Ex. 301 at -408-09 (slide 11 and associated talking points, in color); *see also* Christie (Spirit) Lit. Dep. 132:10-20, June 6, 2023 (describing Spirit as an innovator in the industry).

124. For example, in addition to unbundled fares, Spirit was the first to introduce self-check baggage in the United States. Nov. 3, 2023, Tr. Vol. 1, 73:22-74:2 (Klein/Spirit); Kirby (Spirit) Lit. Dep. 18:24-19:19, May 26, 2023. Spirit was also the first airline to offer handicap-accessible lavatories on most of its aircraft. Tr. Ex. 346 at -501. And Spirit was the first ULCC in the United States to install Wi-Fi across its fleet. Nov. 3, 2023, Tr. Vol. 1, 74:7-10 (Klein/Spirit);

see also Christie (Spirit) Lit. Dep. 145:24-146:8, June 6, 2023.

125. Spirit has also developed an "Invest in the Guest" program to provide a better and more modern experience for Spirit's guests. Nov. 3, 2023, Tr. Vol. 1, 73:2-21 (Klein/Spirit); *see also* Klein (Spirit) Lit. Dep. 91:13-93:8, June 27, 2023 (describing, among other things, Spirit's partnership with the Disney Institute in Orlando, Florida to create a program designed to improve Spirit's customer service). To this end, Spirit has invested in new technology like kiosks and self-bag-check technology, as well as improved Spirit's smartphone application and website, which have made it easier for customers to purchase and manage their travel. Kirby (Spirit) CID Dep. 34:18-35:13, Jan. 12, 2023, discussing Tr. Ex. 301 at -408-09 (slide 11 and associated talking points, in color).

126. In addition, Spirit has engaged in a cabin redesign, "with new seats, better tray tables, [and] music." Tr. Ex. 301 at -411 (notes to slide 12). The new seats include a "[c]urved seatback design . . . to unlock space at the knee level," which allows for more usable legroom than is captured in the standard measure of seat pitch. Nov. 3, 2023, Tr. Vol. 2, 136:5-137:2 (Klein/Spirit), discussing Tr. Ex. 672 at -475.

127. Spirit was able to make all of these customer experience improvements "that really enhance the travel experience" "in a relatively low-unit-cost way." Klein (Spirit) Lit. Dep. 93:12-94:14 at 94:13-14, 91:13-93:8 at 93:7-8, June 27, 2023.

128. Absent the proposed acquisition of Spirit by JetBlue (*hereinafter* the "Proposed Acquisition"), Spirit would continue to "invest in the guest" and has plans to do so. Nov. 3, 2023, Tr. Vol. 1, 75:13-25 (Klein/Spirit).

3. Customers are attracted to Spirit because of its low fares and unbundled business model

129. Spirit's target customers are primarily price-sensitive leisure customers, *i.e.*, non-

corporate customers who are visiting friends and relatives ("VFR") or going on a trip to a leisure destination and are paying for their own ticket. Oct. 31, 2023, Tr. Vol. 2, 94:1-17 (Christie/Spirit) (noting Spirit's target customers are VFR and leisure customers, but Spirit accepts business travelers as well and "offer[s] a product intended to attract a number of people based on the fare we charge and the routes we serve and the products we offer"), discussing Tr. Ex. 347 at -962; Oct. 31, Tr. Vol. 2, 100:20-101:2 (Christie/Spirit) (explaining Spirit's focus customers are "price sensitive" and often pay for their own tickets).

130. Price is one of the most important considerations for Spirit's customers in purchasing an airline ticket, as it is for most airline customers, and is typically the one on which they make their purchase decisions. Christie (Spirit) Lit. Dep. 20:15-21, 71:19-22, June 6, 2023; Klein (Spirit) Lit. Dep. 181:23-182:5, June 27, 2023 (noting "price is . . . [generally] the most important factor for people when they buy tickets"); *id.* at 145:24-146:8; Tr. Ex. 330 at -833-34 (slides 3-4, in color); Tr. Ex. 302 at -580 (slide 10, in color) ("VFR and Leisure Customers want good direct service at the absolute lowest fare as they are paying for the ticket themselves."); Tr. Ex. 320 at -829 (slide 4, in color) (noting in a 2022 presentation to the DOT that Spirit's target consumer is someone paying for their own trip and for whom price is of high importance).

131. Spirit's fares are typically lower than those of other airlines, including JetBlue. Kirby (Spirit) Lit. Dep. 16:6-15, May 26, 2023; Klinka (JetBlue) CID 30(b)(6) Dep. 54:8-12, 55:2-7, Jan. 12, 2023 (noting Spirit's fares are typically lower than those of JetBlue on overlap routes).

132. In fact, historically, Spirit has offered some of the lowest fares in the markets it serves. Nov. 7, 2023, Tr. Vol. 2, 91:25-92:8 (Kirby/Spirit); *accord* Kirby (Spirit), Lit. Dep. 16:16-24, May 26, 2023 ("[G]enerally, we tend to offer some of the lowest fares in the markets

that we serve."); Christie (Spirit) Lit. Dep. 161:7-162:8, June 6, 2023 (confirming Spirit's "relative cost advantage" has historically allowed Spirit to offer a price point "below the current average selling fare, stimulate demand," and earn its target margins).

133. In addition to Spirit's low base fares, passengers are attracted to Spirit's unbundled business model, which allows Spirit's guests to "pick and choose elements of their transportation that are important to them." Oct. 31, 2023, Tr. Vol. 2, 89:12-90:7 (Christie/Spirit) (noting Spirit's à la carte structure gives customers choice to pay for what they value); Klein (Spirit) 30(b)(6) Lit. Dep. 48:11-22, June 27, 2023 (agreeing that "Spirit's focus on ancillary products allows customers to pay only for what they need or want . . . which minimizes their total price and maximizes revenue for Spirit").

134. Some Spirit passengers choose to purchase just the base fare. Oct. 31, 2023, Tr. Vol. 2, 91:1-3 (Christie/Spirit). In fact, approximately one-third of Spirit's passengers do not purchase any ancillaries. Nov. 1, 2023, Tr. Vol. 1, 14:25-15:5 (Christie/Spirit); *see also* Nov. 17, 2023, Tr. Vol. 1, 53:2-55:14 at 55:12-14 (Gowrisankaran/Pls. Expert) (explaining that "[a] lot of people who fly on Spirit . . . are just not that interested in buying these amenities"); Tr. Ex. 812. In addition, 84.4 percent of Spirit's customers do not pay for a carry-on bag, 73.9 percent of Spirit's customers do not pay to select a seat, and 54.1 percent of Spirit's customers do not pay for a checked bag. Tr. Ex. 812; *see also infra* Part VII.D.1.

135. This "À La Smarte" product, as Spirit calls it, "give[s] customers ***the power to save*** by paying only for the . . . options they choose[.]" Tr. Ex. 39 at -444 (emphasis added); Christie (Spirit) Lit. Dep. 68:5-20, June 6, 2023 (agreeing with the statement and noting "[f]or customers who are traveling in an effort to save money, [Spirit's] product gives them a choice and allows them to pick and choose items that are important to them and hopefully save money

in the process").

136. Spirit also offers a product called the Saver$ Club, which, for a periodic subscription fee, allows Saver$ Club members to apply their discounts to up to eight passengers and can reduce families' costs to travel. Nov. 3, 2023, Tr. Vol. 1, 67:19-68:23 (Klein/Spirit).

137. Spirit believes allowing customers to only pay for what they need or want "create[s] some level of customer loyalty" with customers who understand Spirit's model and appreciate Spirit's upfront pricing. Klein (Spirit) 30(b)(6) Lit. Dep. 48:11-50:8 at 49:6-11, June 27, 2023.

138. In addition to offering customers more choice, Spirit's unbundled product helps Spirit reduce costs. For example, because Spirit has separate charges for bags, Spirit's "guests, on average, carry fewer bags than on other airlines," meaning less infrastructure needed to manage the bags and less weight on board the aircraft when its flying. Oct. 31, 2023, Tr. Vol. 2, 89:12-90:3 (Christie/Spirit).

139. Spirit's À La Smarte product contrasts with the products of legacy airlines and LCCs, which may offer a "basic economy" product (or, in the case of JetBlue, a "Blue Basic" product), that still has many ancillary costs baked into the base-fare price. Oct. 31, 2023, Tr. Vol. 2, 91:4-92:1 (Christie/Spirit).

140. In fact, even including all ancillary products, Spirit's total average fare is still "ultra-low" when compared to the average fares of other airlines. Oct. 31, 2023, Tr. Vol. 2, 94:18-95:3 (Christie/Spirit), discussing Tr. Ex. 347 at -962. And Spirit's CEO testified before the House Transportation and Infrastructure Committee in 2019 that Spirit's total fare, including ancillaries, is "on average 30 percent less than other airlines in the United States." Oct. 31, 2023, Tr. Vol. 2, 100:2-14 (Spirit/Christie), discussing Tr. Ex. 121 at 0:15-0:23; Tr. Ex. 320 at -830

(slide 5, in color) (presenting to the ACPAC in 2022 that, "[o]n average, Spirit's total price is more than 30% lower than competitors"); Tr. Ex. 346 at -500 (describing to Congress that Spirit's "total prices including all ancillary products and services are, on average, more than 30% below those of other airlines on our routes").

141. Customers are drawn to Spirit's product; as Spirit's Chief Commercial Officer, Matthew Klein, testified before the House of Representatives Transportation and Infrastructure Committee in March 2020, Spirit's status as "the fastest growing airline in the US for the past one, three, five and 10 years" with consistently high load factors, indicates "American consumers are responding favorably" to Spirit's product. Tr. Ex. 346 at -500; Klein (Spirit) Lit. Dep. 89:19-90:2, June 27, 2023; Nov. 1, 2023, Tr. Vol. 2, 140:4-9 (Clark/JetBlue) (explaining that operating a high "load factor" essentially means selling a high percentage of seats on any given flight).

142. Spirit customer satisfaction surveys further indicate that Spirit's customers are satisfied with Spirit's product, Nov. 6, 2023, Tr. Vol. 2, 150:2-7 (Gardner/Spirit), as does Spirit's increased number of repeat customers, calculated as a "repeat rate," Tr. Ex. 346 at -501; Oct. 31, 2023, Tr. Vol. 2, 111:8-23 (Christie/Spirit), discussing Tr. Ex. 304 at -144 (slide 11, in color) (noting Spirit's business customer repeat rate was over 38 percent for a 12-month period and its leisure customer repeat rate was roughly 32 percent over a 12-month period).

143. Spirit has also received multiple awards recognizing its success and reputation among passengers. For example, in both 2022 and 2023, Spirit received the Airline Passenger Experience Association ("APEX") four-star low-cost carrier award, which is based on passenger feedback, and in 2023, Spirit won Air Transport World's ("ATW's") "Value Airline of the Year." Oct. 31, 2023, Tr. Vol. 2, 76:15-77:2 (Christie/Spirit); Tr. Ex. 83 at -814 (noting in a February 2023 Spirit Press Release that "Spirit Airlines Takes Home Prestigious 'Value Airline

of the Year' Award from Air Transport World (ATW)"). Fortune also named Spirit as one of its most-admired companies in 2021. Oct. 31, 2023, Tr. Vol. 2, 77:3-6 (Christie/Spirit); *see also* Tr. Ex. 643 at -499 (noting Spirit's award as the second-place overall airline in WalletHub's 2023 Best Airline Awards during Spirit's First Quarter 2023 Earnings Call).

4. Spirit's low fares enable price-sensitive customers to fly or fly more frequently

144. As discussed, Spirit focuses on selling to price-sensitive customers who pay for their own tickets. Oct. 31, 2023, Tr. Vol. 2, 100:20-23 (Christie/Spirit); Tr. Ex. 39 at -448 (listing Spirit's "price-sensitive travelers" customer base as a strength of Spirit's business model).

145. Price-sensitive customers who pay for their own tickets contrast with corporate or business travelers who are often traveling at their employers' expense. Oct. 31, 2023, Tr. Vol. 2, 100:24-101:2 (Christie/Spirit); *see also* Bartolotta (Spirit) Lit. Dep. 89:4-23, June 13, 2023 (noting Spirit caters to "discretionary price-sensitive customer[s]," which can also include small business or sole proprietorship travelers).

146. Spirit "use[s] low fares to address underserved markets, which helps [Spirit] to increase passenger volume and load factors on the flights [it] operate[s]." Tr. Ex. 39 at -447; Christie (Spirit) Lit. Dep. 72:2-25, June 6, 2023.

147. These "underserved markets," according to Mr. Christie, are those in which "there is more demand for service . . . than is currently served, however, that demand only clears at a lower fare." Christie (Spirit) Lit. Dep. 72:12-17, June 6, 2023.

148. In other words, Spirit often serves markets in which there is an underserved population who "[is] only willing to travel" if the fare is low. Christie (Spirit) Lit. Dep. 72:18-25, June 6, 2023; *id* at 24:7-13 (noting Spirit provides "low-fare service for people who otherwise couldn't afford to travel as much"); Nov. 3, 2023, Tr. Vol. 1, 67:6-11 (Klein/Spirit) (agreeing Spirit's lower-fare option generally allows people to fly who could not afford to do so

otherwise).

149. Mr. Klein stated as much during Spirit's First Quarter 2023 Earnings Call: "[Spirit] can create travel opportunities for people that may otherwise not have them" with its low fares. Tr. Ex. 643 at -505. According to Mr. Klein, this is especially attractive to VFR passengers who are "typically looking for the lowest fares [they] . . . can possibly find." Klein (Spirit) Lit. Dep. 302:6-303:17 at 302:16-19, June 27, 2023; *id.* at 126:6-14 (Spirit's lower, on average, fares "open up opportunit[ies] for people to fly on [Spirit] that may not be able to fly" otherwise); *accord* Tr. Ex. 346 at -502 (testifying before the Transportation and Infrastructure Committee of the House of Representatives in March 2020 that Spirit is "very proud to offer low-priced, reliable service to those who may have no other option").

150. And, as Mr. Klein testified to the Transportation and Infrastructure Committee of the House of Representative in March 2020, whereas "[c]orporate travelers and more affluent consumers have many choices in today's market[,] Spirit's product is designed for highly price-sensitive travelers, mainly ordinary individual consumers, families and small and medium businesses who pay for their own tickets and who face narrower options." Tr. Ex. 346 at -500; *see also* Klein (Spirit) Lit. Dep. 83:13-20, June 27, 2023 (agreeing that Spirit's product is designed for these price-sensitive customers).

5. Spirit can offer low fares profitably by having lower costs than its competitors

151. Spirit's lower operating costs are what give Spirit the flexibility to operate profitably at lower fare levels. Oct. 31, 2023, Tr. Vol. 2, 102:18-21 (Christie/Spirit); Nov. 7, 2023, Tr. Vol. 2, 91:16-92:3 (Kirby/Spirit); Tr. Ex. 330 at -833 (slide 3, in color) (noting Spirit is the "[l]owest cost producer in most markets" and because of these low costs, Spirit "[c]an have lower fares than [its] competitors and still make $$"); *see also* Tr. Ex. 66 (2019 Spirit 10-K) at -285 ("Our unit operating costs are among the lowest of all airlines operating in the United

States. We believe this unit cost advantage helps protect our market position and enables us to offer some of the lowest base fares in our markets, sustain among the highest operating margins in our industry and support continued growth."); Tr. Ex. 67 (2020 Spirit 10-K) at -395; Tr. Ex. 68 (2021 Spirit 10-K) at -628; Tr. Ex. 39 (2022 Spirit 10-K) at -447.

152. Spirit, for example, does not maintain premium lounges or first-class cabins, which helps it reduce costs. Oct. 31, 2023, Tr. Vol. 2, 88:24-89:11 (Christie/Spirit).

153. Spirit considers its "Ultra Low-Cost Structure" as one of its strengths and a reason it "compete[s] successfully in the airline industry." Tr. Ex. 39 at -447.

154. Spirit's "operating costs per available seat mile ('CASM') of 11.67 cents in 2022 was significantly lower than those of the major domestic network carriers and among the lowest of the domestic low-cost-carriers." Tr. Ex. 39 at -447.

155. Spirit continues to have some of the lowest costs in the U.S. airline industry, including lower than those of JetBlue. Oct. 31, 2023, Tr. Vol. 2, 83:3-84:7 (Christie/Spirit) (noting Spirit's CASM excluding the price of fuel is typically lower than that of JetBlue), discussing Tr. Ex. 347 at -960; *see also* Christie (Spirit) Lit. Dep. 79:11-19, 174:10-14, 195:10-196:2, June 6, 2023 (describing Spirit as having a cost advantage over Southwest, JetBlue, American, United, and Delta); Klein (Spirit) Lit. Dep. 310:14-25, June 27, 2023 ("[O]n average, across the entire system, Spirit's unit costs are lower than most other airlines").

156. Mr. Hayes has even noted that, because JetBlue's unit cost structure is higher than that of Spirit, it has historically been more difficult for JetBlue to compete with Spirit on routes to/from certain airports, including Fort Lauderdale. Tr. Ex. 673 at -686 ("Our model was built to compete against legacies but we found it worked against ULCC's [sic] but FLL says otherwise."); *see also* Nov. 3, 2023, Tr. Vol. 2, 151:23-25 (Hayes/JetBlue) (confirming JetBlue's

cost structure is higher than Spirit's).

157. And, when discussing updates to a JP Morgan investor presentation in early March 2020, Mr. Klein expressed to Spirit's CEO and others that Spirit should convey to JP Morgan that Spirit's "cost structure will win, [other airlines] can't compete with [Spirit] on a sustained basis[.]" Tr. Ex. 312 at -380.

a. Spirit typically operates at higher aircraft- and gate-utilization rates than its competitors

158. "A large component of how [Spirit] achieve[s] [its] industry-leading costs" is through high utilization of its assets. Nov. 7, 2023, Tr. Vol. 2, 88:23-89:4 (Kirby/Spirit); *see also* Oct. 31, 2023, Tr. Vol. 2, 85:5-24 (Christie/Spirit); Kirby (Spirit) 30(b)(6) Lit. Dep. 10:11-17, May 26, 2023 (noting "high utilization of assets is part of [Spirit's] DNA").

159. Spirit tends to operate at higher utilization rates than its legacy and LCC competitors. Nov. 7, 2023, Tr. Vol. 2, 89:5-10 (Kirby/Spirit).

160. **Aircraft Utilization:** One way in which Spirit strives to operate at lower cost is by operating higher aircraft utilization, *i.e.*, operating its aircraft for more hours each day, Nov. 7, 2023, Tr. Vol. 2, 89:11-15 (Kirby/Spirit); Oct. 31, 2023, Tr. Vol. 2, 85:5-24 (Christie/Spirit), which allows Spirit to attain more ASMs out of a single aircraft, Nov. 7, 2023, Tr. Vol. 2, 89:16-20 (Kirby/Spirit).

161. Spirit's predominately point-to-point network helps Spirit increase the daily use of its aircraft as Spirit's planes do not have to wait for connecting flights, as with a hub network. Nov. 7, 2023, Tr. Vol. 2, 89:21-90:12 (Kirby/Spirit); Oct. 31, 2023, Tr. Vol. 2, 85:25-86:19 (Christie/Spirit), discussing Tr. Ex. 347 at -961; *supra* Part II.A.

162. Spirit's current aircraft utilization is 13.7 hours per day per aircraft, higher than its goal from earlier this year of 13.5 hours per day per aircraft. Nov. 7, 2023, Tr. Vol. 2, 90:22-91:1

(Kirby/Spirit); Kirby (Spirit) CID Dep. 46:21-47:3, Jan. 13, 2023.

163. Spirit aims to maximize aircraft utilization within operational constraints, such as reasonable on-time performance, Nov. 7, 2023, Tr. Vol. 2, 90:13-21 (Kirby/Spirit), and Spirit will continue to do so absent the Proposed Acquisition, Nov. 7, 2023, Tr. Vol. 2, 91:2-5 (Kirby/Spirit).

164. **Gate Utilization:** Spirit also lowers its costs by highly utilizing its gates; Spirit strives to turn a higher number of airplanes per day per gate than "an average airline." Oct. 31, 2023, Tr. Vol. 2, 88:16-23 (Christie/Spirit); Klein (Spirit) Lit. Dep. 160:13-161:3 (explaining Spirit aims for a high turn rate); *see also* Bartolotta (Spirit) Lit. Dep. 189:5-12, June 13, 2023 (defining "turn time" as the time between the first flight landing and the next flight departing, *i.e.*, "the time the aircraft is on the ground").

165. Spirit's current goal is to operate eight flights per day per gate at the airports it serves. Nov. 7, 2023, Tr. Vol. 2, 91:10-15 (Kirby/Spirit). Operating eight flights per day per gate is important for Spirit to operate its low-cost/low-fare business model at high-cost airports. In fact, one reason Spirit wanted to acquire the 16 peak-hour runway timings relinquished by Southwest at Newark Liberty International Airport ("Newark" or "EWR")—one of the most expensive airports at which to operate in the country—was to fully utilize its gates at eight departures per day per gate at the airport. Nov. 8, Tr. Vol. 1, 35:6-22 (Kirby/Spirit).

166. This ability to control and fully utilize a gate is one reason Spirit typically tries to secure preferential gates versus using common-use gates. *See* Nov. 7, 2023, Tr. Vol. 2, 132:18-25, 133:7-17 (Kirby/Spirit).

167. Preferential gates are typically leased by an airport to a specific carrier, which is then free to use the gates as desired, provided the carrier does not underutilize the gate. Nov. 7,

2023, Tr. Vol. 2, 133:7-17 (Kirby/Spirit). By contrast, common-use gates are not exclusive to a given carrier and can be used by any airline. Nov. 8, 2023, Tr. Vol. 1, 78:20-79:6 (Kirby/Spirit).

168. Spirit strongly prefers to enter an airport using a preferential gate versus a common-use gate, Nov. 8, 2023, Tr. Vol. 1, 79:13-80:7 at 79:15-16 (Kirby/Spirit), because Spirit has less control over when and how often it can use a common-use gate, Nov. 7, 2023, Tr. Vol. 2, 133:7-17 (Kirby/Spirit); *see also* Nov. 8, 2023, Tr. Vol. 1, 84:3-10 (Kirby/Spirit) (noting that Spirit "prefer[s] to get preferential gates because then it allows [Spirit] to control [its] growth, versus a common-use gate, [for which] it's somewhat arbitrary").

b. Spirit's layout of passenger accommodation ("LOPA") allows Spirit to serve more customers at a lower cost per customer

169. Spirit also strives to achieve lower costs by operating higher-density aircraft, or more seats per comparable aircraft, than its competitors. Oct. 31, 2023, Tr. Vol. 2, 85:5-24 (Christie/Spirit), discussing Tr. Ex. 347 at -961; Nov. 7, 2023, Tr. Vol. 2, 91:6-9 (Kirby/Spirit) (noting Spirit's aircraft "are generally more dense than many of our competitors"); *see also* Tr. Ex. 39 at -447 (noting, in Spirit's 2022 10-K, that Spirit has "high-density seating configurations on [its] aircraft and a simplified onboard product designed to lower costs" and uses its "low fares to address underserved markets, which helps us to increase passenger volume and load factors").

170. Having more seats per aircraft allows Spirit to spread out aircraft and crew costs over more seats. Oct. 31, 2023, Tr. Vol. 2, 85:5-24 (Christie/Spirit), discussing Tr. Ex. 347 at -961.

171. One way in which Spirit achieves more seats per aircraft is by having a 28-inch seat pitch – narrower than other airlines. Nocella (United) Lit. Dep. 50:16-51:6, June 28, 2023. But, as noted above, Spirit's innovative cabin design has enabled it to provide guests with more usable legroom while still achieving high density. *Supra* Part II.D.2.

172. JetBlue has fewer seats per equivalent aircraft than Spirit. Nov. 3, 2023, Tr. Vol. 1, 49:13-16 (Klein/Spirit); *see also* Nov. 8, 2023, Tr. Vol. 1, 40:18-25 (Kirby/Spirit); Friedman (JetBlue) 30(b)(6) CID Dep. 96:4-10, Jan. 19, 2023 (confirming there are more seats on a Spirit aircraft relative to the equivalent JetBlue aircraft).

173. In fact, Spirit noted in its March 2022 proposal to DOT to operate 16 peak-hour runway timings at Newark that "Spirit's gauge (average seats per departure) is among the highest in the industry on domestic flights, and is by far the leader in EWR," beating out other airlines, including JetBlue. Nov. 8, 2023, Tr. Vol. 1, 39:19-40:5 (Kirby/Spirit), discussing Tr. Ex. 319 at -738.

174. Specifically, with respect to how its average gauge compared to that of JetBlue, the only other applicant to apply for all 16 peak-hour runway timings, *see* Tr. Ex. 221 at -208, Spirit explained:

> Though the seat differences per-flight may seem relatively small, Spirit generates many more seats to compete with other airlines which are offered to consumers at low fares. For example, the 41 seats per departure difference between NK and B6 would translate to over 30,000 more seats per year on just one more daily flight.[3]

175. Absent the Proposed Acquisition, Spirit plans to increase its seat utilization by increasing the gauge of its aircraft through retiring its Airbus A319 fleet—Spirit's smallest aircraft by seats per aircraft—and taking delivery of Airbus A321neos, which have more seats. Kirby (Spirit) Lit. Dep. 128:21-129:12, May 26, 2023.

176. Spirit also strives to fill most, if not all, of the seats on its aircraft, *i.e.*, to operate with a high load factor, by attracting guests with its low fares. Tr. Ex. 39 at -447. In the third quarter of 2023, Spirit's load factor was over 80 percent. Tr. Ex. 633 at -559.

177. Spirit's high passenger volume and load factor enable Spirit to sell more ancillary

[3] Tr. Ex. 319 at -739.

products and services, "which in turn allows [Spirit] to reduce the base fare [it] offer[s] even further." Tr. Ex. 39 at -447.

c. Spirit's uniform, all-Airbus fleet, one of the youngest in the industry, allows for lower costs

178. Spirit operates an all-Airbus A320 family fleet, which today includes the smallest A319, the midsize A320, and the largest A321 models. Oct. 31, 2023, Tr. Vol. 2, 92:4-19 (Christie/Spirit). According to Mr. Christie, "[t]he benefit to operating a uniform fleet from a cost perspective is twofold. One is that it is the same exact training and cockpit for your flight crews, both for your inflight crews and your pilots. And secondarily, they are maintained roughly the same. . . [and] have a similar amount of spare parts that are in common[.]" Oct. 31, 2023, Tr. Vol. 2, 92:4-19 at 92:13-19 (Christie/Spirit); *see also* Tr. Ex. 39 at -444, -447 (listing, in Spirit's 2022 10-K, the cost benefits of Spirit's young, all-Airbus fleet).

179. Spirit's fleet is also one of the youngest in the domestic airline industry. Tr. Ex. 347 at -964; Tr. Ex. 39 at -444, -447. According to Mr. Christie, "newer aircraft[] tend to be more fuel-efficient than older aircraft, which is good for variable operating expenses," and "younger aircraft tend to be more reliable, meaning they spend less time in maintenance" so "they're up and operating more frequently." Oct. 31, 2023, Tr. Vol. 2, 92:20-93:7 (Christie/Spirit); Tr. Ex. 346 at -501 ("Spirit operates one of the newest and most fuel-efficient fleets in the Americas, ranking consistently as a leader in fuel consumption per passenger.").

180. Spirit expects to continue to have one of the youngest fleets in the United States with additional aircraft orders. Christie (Spirit) Lit. Dep. 70:6-17, June 6, 2023.

6. Spirit competes effectively today against all airlines

181. Spirit competes against all airline carriers and is not deterred from entering a route based on the presence of legacy or other carriers. Nov. 7, 2023, Tr. Vol. 2, 123:22-124:2

(Kirby/Spirit). In fact, Mr. Kirby highlighted that "[i]t's rare [Spirit is] in a market where there isn't competition." Nov. 7, 2023, Tr. Vol. 2, 118:21-119:1 (Kirby/Spirit). By contrast, other ULCCs intentionally avoid competition, particularly on routes to/from primary airports. *Supra* Part II.A.5 (regarding Allegiant); *infra* Part VII.A.5; *see also* Nov. 8, 2023, Tr. Vol. 1, 45:9-16 (Kirby/Spirit), discussing Tr. Ex. 319 at -753 (agreeing with Spirit's assertion, in its 2022 Newark landing-times application to the DOT, that Avelo and Breeze have "business models [that] are designed to avoid head-to-head competition with legacy airlines").

182. Spirit also aims to operate out of so-called primary airports, as these typically serve the biggest markets. Nov. 7, 2023, Tr. Vol. 2, 118:15-20 (Kirby/Spirit); Oct. 31, 2023, Vol. 2, 95:9-11 (Christie/Spirit) (noting Spirit has been successful in most of the primary airports it serves); *see also* Christie (Spirit) CID Dep. 114:1-19, Jan. 24, 2023 (concluding that a Spirit reference to not "fly[ing] passengers out of the way… [but] to the same major airports as legacies" was a reference to Spirit's flying to primary, rather than secondary, airports).

183. "Primary airports" are the more well-established and busier airports in an area. Nov. 7, 2023, Tr. Vol. 2, 118:15-20 (Kirby/Spirit). Often, routes to and from primary airports are served by other carriers, including legacy carriers. *Id.* at 118:21-119:1 (Kirby/Spirit). Spirit currently serves 24 of the 26 largest metro areas in the United States; of those 24, Spirit is in the primary airports of 22. Kirby (Spirit) Lit. Dep. 227:2-5, 227:23-228:1, May 26, 2023.

184. Spirit typically enters large markets served by other airlines with daily service, as Spirit believes providing daily service in large markets makes it more competitive with the typically high-frequency legacy airlines serving those markets. Kirby (Spirit) Lit. Dep. 172:12-173:1, 173:24-174:19, May 26, 2023.

185. Today, Spirit operates more than 80 percent of its routes at least once a day. Nov.

8, 2023, Tr. Vol. 1, 42:2-9 (Kirby/Spirit) (noting Spirit's October schedule anticipated 100 percent of Spirit's routes would be flown daily); *accord* Nov. 14, 2023, Tr. Vol. 1, 53:3-9 (Biffle/Frontier) (noting Frontier serves routes less frequently than Spirit by an estimated 30 percent); *infra* Part VII.A.6.

186. Other airlines, including legacy airlines, likewise view Spirit as a competitor. *See, e.g.*, Beck (Delta) 30(b)(6) Lit. Dep. 8:9-14, July 12, 2023 ([redacted]); Znotins (American) Lit. Dep. 61:12-62:4, June 23, 2023 ([redacted]); Tr. Ex. 375 at -474 (JetBlue's Direct of Revenue Management, Jonathan Weiner, noting in a July 14, 2020 email that it has been "exceptionally difficult to price higher in markets" with legacies matching ULCC fares, particularly "since [Spirit] capacity was reintroduced").

187. And other airlines respond to Spirit's competition. For example, when Spirit entered the New York City-Santo Domingo market, United lowered its fares from Newark to Santo Domingo and Delta and JetBlue lowered their fares from New York's John F. Kennedy International Airport ("JFK") to Santo Domingo, ultimately resulting in fares that were more than $100 below equivalent fares available in the market prior to Spirit's entry. Nov. 1, 2023, Tr. Vol. 2, 135:12-137:7 (Clark/JetBlue), discussing Tr. Ex. 644 at -461-62.

188. At the Hartsfield-Jackson Atlanta International Airport in Atlanta, Georgia ("Atlanta" or "ATL"), a Delta hub and the world's busiest airport, Kirby (Spirit) Lit. Dep. 120:24-121:10, May 26, 2023, Spirit has also made significant inroads despite Delta's presence, taking advantage of international gate availability during the COVID-19 pandemic to grow, Nov. 8, 2023, Tr. Vol. 1, 86:15-18 (Kirby/Spirit).

189. [redacted] Beck (Delta) Lit. Dep. 69:5-10, 70:19-71:11, 72:11-25, July 12, 2023. [redacted]. Tr. Ex. 15 at -421; *id.* at -444 ([redacted]); Beck (Delta) Lit. Dep. 32:16-25, 33:2-7, July 12, 2023.

190. With respect to American, for example, in the latter half of 2019, following Spirit's entrance into several routes served by American out of American's hub at Charlotte Douglas International Airport ("Charlotte" or "CLT"), American [redacted] for American. Znotins (American) Lit. Dep. 221:11-23, 221:25-222:19, June 23, 2023.

191. Spirit touted its success against legacy carriers, especially on routes to/from their hubs, throughout its March 2022 application to the DOT for the 16 peak-hour runway timings at Newark to emphasize that it could continue to compete successfully in Newark, a United hub, against United. *See, e.g.*, Nov. 8, 2023, Tr. Vol. 1, 39:3-9 (Kirby/Spirit), discussing Tr. Ex. 319 at -734 (noting Spirit's "success[] compet[ing] with legacy carriers at major hubs, including, *e.g.*, Dallas (DFW), Houston (IAH), Chicago (ORD), Los Angeles (LAX), Detroit (DTW), Atlanta (ATL), [and] Miami (MIA)"); Tr. Ex. 319 at -748 (illustrating the "Spirit Effect" of Spirit's entry into routes at competitor hubs as indicative that "Spirit's Ultra-Low-Cost Service Competes with Legacy Carriers at Nearly All Major Domestic Hubs"); *id.* at -749 (illustrating Spirit's more consistently high numbers of daily departures compared to other ULCCs and LCCs, including

JetBlue, at major legacy hubs); Nov. 8, 2023, Tr. Vol. 1, 45:17-46:6 (Kirby/Spirit) (agreeing that Spirit's application for the Newark slots was an effort to show that Spirit could be trusted to compete against United using Spirit's track record of competing against other legacy carriers).

192. Spirit believed it was the most qualified to bring competition to United among all applicants, including JetBlue. Nov. 8, 2023, Tr. Vol. 1, 36:23-37:5 (Kirby/Spirit).

193. JetBlue and Spirit were ultimately the *only* airlines to apply for all 16 peak-hour runway timings. Tr. Ex. 221 at -208, -210. And the DOT concluded that Spirit had met the criteria set forth by the DOT and awarded all 16 runway timings to Spirit. Nov. 8, 2023, Tr. Vol. 1, 36:12-15; 37:12-21 (Kirby/Spirit); Tr. Ex. 221 at -208, -210-17.

194. Specifically, the DOT found that:

> Spirit's application will produce greater consumer benefits for a larger pool of passengers at EWR. Spirit has demonstrated its ability to maintain a significantly lower cost structure, allowing it to offer lower fares to more passengers, and has a demonstrated history of entering and stimulating markets (including those dominated by United or other legacy carriers).[4]

195. By contrast, JetBlue has had difficulty being successful in airports that serve as hubs for other airlines. For example, JetBlue has had trouble growing at Chicago's O'Hare International Airport ("ORD"), a hub for United and American, Nov. 2, 2023, Tr. Vol. 1, 60:8:18, and JetBlue has also faced challenges at Houston's George Bush Intercontinental Airport ("IAH"), which is a hub for United, *id.* at 60:10-23, 61:23-62:2.

7. Spirit's entry into a route stimulates travel and lowers market-wide average fares; this is known as the "Spirit Effect"

196. When deciding which new routes to enter, Spirit typically looks to enter high-fare markets with fares that are lower than the pre-Spirit average fare to stimulate or increase passenger demand. Nov. 7, 2023, Tr. Vol. 2, 92:9-16 (Kirby/Spirit).

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[4] Tr. Ex. 221 at -217.

197. Increased passenger demand can mean either "more travelers or more frequent travelers," Oct. 31, 2023, Vol. 2, 103:22-25 (Christie/Spirit), on not just Spirit flights on a route, but across all carriers flying that route, *id.* at 104:4-8.

198. For example, this past summer, Spirit entered several routes to/from Boston, including routes from Boston to Charlotte Douglas International Airport ("Charlotte" or "CLT"), Boston to Dallas-Fort Worth International Airport ("Dallas" or "DFW"), Boston to Los Angeles International Airport ("Los Angeles" or "LAX"), and Boston to Phoenix Sky Harbor International Airport ("Phoenix" or "PHX"). Nov. 7, 2023, Tr. Vol. 2, 102:6-15 (Kirby/Spirit); *see also* Tr. Ex. 45 at -647-48. All four of these routes are also served by JetBlue. Nov. 7, 2023, Tr. Vol. 2, 102:19-21 (Kirby/Spirit). Spirit entered these routes because the average fares on these high-demand routes are, historically, high during the peak summer window and Spirit believed it could enter with lower fares than those offered by the incumbent carriers, including JetBlue. Nov. 7, 2023, Tr. Vol. 2, 102:22-103:10 (Kirby/Spirit).

199. In the past, using publicly available data from the DOT, Spirit's Network Planning Group, led by John Kirby, has looked at the impact Spirit's entry into a market has on the number of passengers flying in that market and the average fares, *i.e.*, the "Spirit Effect." Oct. 31, 2023, Tr. Vol. 2, 105:12-18 (Christie/Spirit); Nov. 7, 2023, Tr. Vol. 2, 92:23-93:6 (Kirby/Spirit).

200. Spirit has found that, typically, once Spirit enters a route, passenger demand increases and the average fare on that route decreases. Nov. 7, 2023, Tr. Vol. 2, 93:14-94:7 (Kirby/Spirit). This "stimulat[ion] [of] additional demand in[] the marketplace" from Spirit's introduction of "lower fares" means that "more people travel more frequently with lower fares." Oct. 31, 2023, Tr. Vol. 2, 102:25-103:9 (Christie/Spirit).

201. Mr. Christie agreed that the Spirit Effect "has proven true in nearly every instance, which we believe validates our model and shows the benefit low cost service can bring to existing markets, no matter how large or small, or the level of current service." Christie (Spirit) Lit. Dep. 124:16-126:21, June 6, 2023. The markets in which Spirit competes have been more difficult to forecast in the post-pandemic environment, but Mr. Christie maintained the "belie[f] that over time, this will still be true" with respect to Spirit's impact on the markets it enters. *Id.*

202. It is not just Spirit's low fare that decreases the average fare; frequently, other carriers' fares also drop following Spirit's entry into a route. Nov. 7, 2023, Tr. Vol. 2, 94:8-18 (Kirby/Spirit); *see also* Christie (Spirit) Lit. Dep. 38:8-19, June 6, 2023 (testifying that he has seen data suggesting other airlines react to Spirit's entry to a route by dropping their fares); Nov. 6, 2023, Tr. Vol. 2, 147:8-11 (Gardner/Spirit) (noting that Spirit serves as a check on other airlines' fares, including JetBlue's); Kirby (Spirit) Lit. Dep. 167:3-14, May 26, 2023 (stating that "frequently" other carriers' fares drop when Spirit's enters a market).

203. In fact, JetBlue's CEO, Mr. Hayes, recognized in late 2019 that legacy airlines were lowering their fares in response to Spirit's entry into a route—even offering fares below cost—to try to compete with Spirit, which caused JetBlue to have revenue challenges. Nov. 3, 2023, Tr. Vol. 2, 168:1-8, 168:16-23 (Hayes/JetBlue), discussing Tr. Ex. 676 at -625-26.

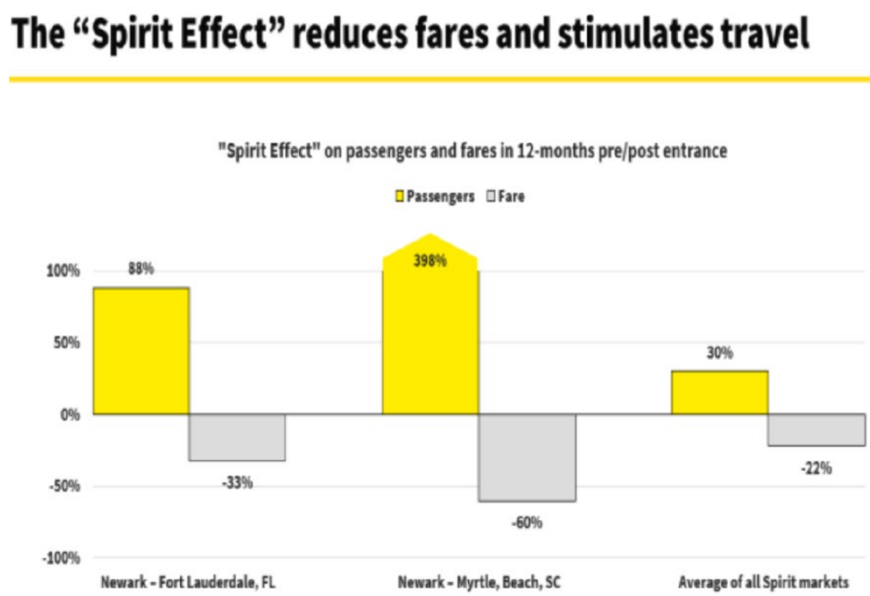
204. In addition, Mr. Kirby's team has found that when other airlines lower their fares in response to Spirit's low fares, this can "stimulate[] demand even greater than [Spirit] can do on [its] own." Nov. 7, 2023, Tr. Vol. 2, 94:24-95:3 (Kirby/Spirit).

205. In its March 2022 application to the DOT for Southwest's 16 relinquished runway timings, Spirit stated that it "provided needed competition [in Newark] by focusing on monopoly

and duopoly markets and bringing down fare levels through the 'Spirit Effect,'" including on routes in which JetBlue was part of a duopoly with United. Tr. Ex. 319 at -747; *see also* Nov. 8, 2023, Tr. Vol. 2, 102:14-19 (Kirby/Spirit) (noting that Spirit has "had great success at Newark," particularly now that Spirit can fully utilize its Newark gates with the relinquished Southwest capacity).

206. For example, Spirit calculated and illustrated to the DOT that, with respect to Spirit's entry effect on the Newark-Fort Lauderdale route (a route that had previously been served only by JetBlue and United), passengers increased by 88 percent and the average fare decreased by 33 percent comparing 12-months *post*-Spirit entry with 12-months *pre*-Spirit entry. Oct. 31, 2023, Tr. Vol. 2, 106:6-25 (Christie/Spirit), discussing Tr. Ex. 298 at -731 (PDF p. 26, color version); Tr. Ex. 319 at -747 (showing the Newark-Fort Lauderdale route had previously been served exclusively by JetBlue and United); *id.* at -736 (showing the same "Spirit Effect" graphic as Tr. Ex. 298 at -731).

207. Using the same comparative framework, Spirit also found that passengers increased by 398 percent and the average fare shrank by 60 percent on the Newark-Myrtle Beach route post-Spirit entry, and that, on average, across all routes, Spirit's entry into a market or route increased the number of passengers by 30 percent and reduced fares by 22 percent. Tr. Ex. 298 at -731 (PDF p. 26, color version); *see also* Tr. Ex. 319 at -736; Oct. 31, 2023, Tr. Vol. 2, 107:16-108:19 (Christie/Spirit); Nov. 7, 2023, Tr. Vol. 2, 92:17-22 (Kirby/Spirit) (noting that Spirit's entry into a market can reduce fares by 30 to 50 percent).



208. [5]

209. Spirit has also calculated the impact its entry has had on routes to/from Atlanta. Based on a December 2019 analysis, for example, Spirit found passengers increased on routes by up to 36 percent and fares reduced by as much a 31 percent once Spirit entered routes touching Atlanta. Kirby (Spirit) Lit. Dep. 120:11-121:1, 122:7-25, May 26, 2023 (attributing the reduction in average fares "[t]o the low fares that [Spirit] offer[s]").

210. Because other carriers on a route frequently reduce their fares in response to Spirit's entry, customers benefit from the Spirit Effect, whether they fly Spirit or not. Nov. 3, 2023, Tr. Vol. 1, 76:15-21 (Klein/Spirit), referencing Mr. Klein's statement to Congress in March 2020, Tr. Ex. 346 at -502 ("[W]ith the strong discipline [Spirit] exert[s] on the prices charged by other airlines, we . . . help drive savings for all travelers, whether they fly [Spirit] or not."); Nov. 7, 2023, Tr. Vol. 2, 95:4-7 (Kirby/Spirit) (agreeing that lower fares from the Spirit Effect help people travel "whether they fly Spirit or not").

211. The effect Spirit's *exit* from a market has on the average fare and customer

[5] Excerpt from Tr. Ex. 319 at -736.

volume in that market further illustrates Spirit's impact; as JetBlue found in March 2022, analyzing 12 routes Spirit exited between 2014 and 2018, the "average fare [among those routes]. . . increased 30 percent one year after . . . the Spirit exit" and "the market size . . . shr[a]nk." Nov. 9, 2023, Tr. Vol. 1, 20:23-21:13, 21:25-22:16 (Friedman/JetBlue), discussing Tr. Ex. 413 at -756; *see also infra* Part VI.A.1.

8. Spirit targets areas for growth based on where people live and where they want to go

212. Spirit has traditionally targeted three primary areas on which to focus its growth: (a) major metropolitan areas, (b) large domestic and international leisure destinations, and (c) international VFR destinations in Latin America, the Caribbean, and northern South America. Nov. 7, 2023, Tr. Vol. 2, 122:21-123:13, 125:8-127:3, 127:7-128:12 (Kirby/Spirit), discussing Tr. Ex. 285 at -062; Tr. Ex. 301 at -401 (listing these areas as part of "a network designed to serve low fare leisure passengers").

213. Although Spirit's target customers are VFR and leisure passengers, Spirit's product is not restricted to these passengers, but is "intended to attract a number of people based on the fare [Spirit] charge[s] and the routes [Spirit] serves" along with the various products Spirit offers. Oct. 31, 2023, Tr. Vol. 2, 94:8-17 (Christie/Spirit). In other words, Spirit strives to offer service where many people live and want to go, both domestically and internationally. Nov. 7, 2023, Tr. Vol. 2, 122:21-123:8 (Kirby/Spirit)

a. Major metropolitan areas

214. Consistent with this overall strategy, Spirit seeks to fly to and from large cities given the volume of people living in them. Klein (Spirit) Lit. Dep. 127:8-19, June 27, 2023.

215. Historically, Spirit has been more likely than other ULCCs to enter and compete with legacies in markets that serve major metropolitan areas. Nov. 7, 2023, Tr. Vol. 2, 124:14-18

(Kirby/Spirit); *see also* Oct. 31, 2023, Tr. Vol. 2, 95:19-25 (Christie/Spirit) (agreeing that other ULCCs have had less success maintaining a presence at primary airports than Spirit); Nov. 14, 2023, Tr. Vol. 1, 52:18-23 (Biffle/Frontier) (explaining that "[h]istorically [Spirit] ha[s] been more leveraged to the larger markets").

216. And, today, Spirit maintains a strong position among domestic ULCCs in large metropolitan areas in terms of the size of its service portfolio. Oct. 31, 2023, Vol. 2, 95:4-8 (Christie/Spirit), discussing Tr. Ex. 347 at -962; Nov. 7, 2023, Tr. Vol. 2, 124:3-13 (Kirby/Spirit) (stating that Spirit has a larger service portfolio in many of the larger domestic cities compared to other ULCCs).

217. As a result, the breadth of Spirit's network service in many major metropolitan cities would be difficult for other ULCCs to replicate without "some help." Nov. 7, 2023, Tr. Vol. 2, 125:1-7 (Kirby/Spirit); Tr. Ex. 301 at -401 ("Spirit has the strong position [in large metropolitan cities] among ULCCs and [its] breadth of access is difficult to replicate").

b. Large leisure destinations

218. The leisure destinations Spirit targets are typically large vacation destinations in the United States, Latin America, the Caribbean, and northern South America. Nov. 7, 2023, Tr. Vol. 2, 125:17-23, 127:7-10 (Kirby/Spirit).

219. And Spirit's traditional "core cities," or the cities in which Spirit has made substantial investment, include the major domestic leisure destinations of Fort Lauderdale, Orlando, and Las Vegas. Nov. 7, 2023, Tr. Vol. 2, 129:9-12 (Kirby/Spirit).

220. In addition to these three core cities, Spirit serves other major leisure destinations like Myrtle Beach, South Carolina; Nashville, Tennessee; New Orleans, Louisiana; and Fort Myers, Florida, Nov. 7, 2023, Tr. Vol. 2, 125:17-126:2 (Kirby/Spirit), as well as Cancun, Mexico, and Aruba, Nov. 8, 2023, Tr. Vol. 1, 22:17-23:10 (Kirby/Spirit), and San Juan, Puerto

Rico, Nov. 7, 2023, Tr. Vol. 2, 97:14-21 (Kirby/Spirit), among others.

221. Since 2019, Spirit has started service on routes to/from several major domestic metropolitan airports and several airports serving large leisure destinations, including (among others), Orange County, California (the "gateway to Disneyland") via the John Wayne Airport, Nov. 7, 2023, Tr. Vol. 2, 126:24-127:3 (Kirby/Spirit); Nov. 8, 2023, Tr. Vol. 1, 9:6-12 (Kirby/Spirit), discussing Kirby Demonstrative 3, and Puerto Vallarta, Mexico via the Puerto Vallarta International Airport, Nov. 8, 2023, Tr. Vol. 1, 9:24-25 (Kirby/Spirit), discussing Kirby Demonstrative 3; *see also* Kirby (Spirit) Lit. Dep. 35:24-36:13, May 26, 2023. In addition, Spirit plans to start flying routes to and from Tulum, Mexico. Nov. 7, 2023, Tr. Vol. 2, 127:11-13 (Kirby/Spirit).

c. International destinations

222. A third part of Spirit's overall network strategy is to maintain a strong international presence in Latin America, the Caribbean, and northern South America. Nov. 7, 2023, Tr. Vol. 2, 127:14-25 (Kirby/Spirit); Tr. Ex. 301 at -401 (slide 6, in color); Klein (Spirit) Lit. Dep. 127:8-23, June 27, 2023. Spirit focuses on Latin America, the Caribbean, and northern South America, in part, because Spirit's headquarters, South Florida, is home to a large number of expats from those areas. Nov. 7, 2023, Tr. Vol. 2, 128:1-6 (Kirby/Spirit); *see also* Kirby (Spirit) Lit. Dep. 65:18-66:4, May 26, 2023 (noting Spirit "can use Fort Lauderdale as a gateway to get a lot of our network [to Central America, the Caribbean, and South America]").

223. Spirit has been operating in the Caribbean and Latin America for over 20 years. Klein (Spirit) Lit. Dep. 130:12-15, June 27, 2023. And Spirit's network is one of the largest, if not the largest, ULCC network in the area. *Id.* at 130:24-131:1, 131:3-10 ("I think that our network may be the largest network in Latin America and the Caribbean, out of . . . ULCCs."); Nov. 8, 2023, Tr. Vol. 1, 24:12-20 (Kirby/Spirit), discussing Tr. Ex. 310 at -111 (noting, in

December 2021, that "among the LCC/ULCC crowd [Spirit was] the largest [international] carrier by ASMs); Nov. 8, 2023, Tr. Vol. 1, 25:18-27:3 (Kirby/Spirit) (agreeing Spirit had the most international ASMs compared to other ULCCs Frontier, Allegiant, and Sun Country).

224. Spirit has generally been successful in serving international routes year-round. Nov. 8, 2023, Tr. Vol. 1, 23:14-18 (Kirby/Spirit). Today, approximately 15 to 20 percent of Spirit's capacity, based on available seat miles, is deployed on international routes. Christie (Spirit) Lit. Dep. 112:24-113:14, June 6, 2023 (noting about 15 percent); Tr. Ex. 643 at -500 (stating, in Spirit's First Quarter 2023 Earnings Call that, starting in May 2023, Spirit would be "back to having at least 20% of our capacity in Latin America and the Caribbean on a monthly basis").

E. Spirit Is A Reliable Airline, Has Seen Significant Growth, And Plans To Continue This Growth

1. Spirit has a strong reputation with respect to its growth

225. Spirit's reputation throughout the U.S. airline industry is that it is a realistic and reliable carrier with respect to airport and route growth. Nov. 7, 2023, Tr. Vol. 2, 107:17-108:12 (Kirby/Spirit), *accord* Kirby (Spirit) Lit. Dep. 199:12-200:2, May 26, 2023. Spirit's strategy has been to overdeliver on its promises to airports, rather than overpromise and fall short. Nov. 7, 2023, Tr. Vol. 2, 107:17-22 (Kirby/Spirit).

226. By contrast, Mr. Kirby has described JetBlue as tending to be more "bombastic" than Spirit in terms of its announcements regarding airport growth. Nov. 7, 2023, Tr. Vol. 2, 107:13-16 (Kirby/Spirit). Spirit has observed JetBlue failing to live up to many of its public growth promises to airports, including promises made to airports in which Spirit offers service such as LAX, Newark, Philadelphia International Airport ("Philadelphia" or "PHL"), and Orlando International Airport ("Orlando" or "MCO"). Nov. 7, 2023, Tr. Vol. 2, 106:18-108:4

(Kirby/Spirit); Kirby (Spirit) Lit. Dep. 199:12-200:18, May 26, 2023 ("And [JetBlue] do[es] have a history of maybe not fulfilling their promises.").

2. Spirit's network planning is realistic

227. Spirit's Network Planning Group, headed by Mr. Kirby, oversees long-term strategic network planning at Spirit, Nov. 7, 2023, Tr. Vol. 2, 83:6-12 (Kirby/Spirit), as well as capacity planning and schedule planning, Nov. 7, 2023, Tr. Vol. 2, 84:22-85:24 (Kirby/Spirit).

228. The Network Planning Group annually puts together a Five-Year Network Plan that lays out the high-level objectives for Spirit's route network over the next five years and Spirit's "best estimate" as to the cities and routes it will enter. Oct. 31, 2023, Tr. Vol. 2, 112:1-24 (Christie/Spirit); Nov. 7, 2023, Tr. Vol. 2, 116:14-25 (Kirby/Spirit).

229. Spirit also prepares five-year and monthly capacity plans, which set out which routes Spirit will fly and how often. Nov. 8, 2023, Tr. Vol. 1, 28:11-29:14 (Kirby/Spirit).

230. Spirit's Five-Year Network Plan is realistic in terms of the number of airports and specific airports Spirit plans to enter, although Spirit may adjust which airports it enters as new opportunities arise. Nov. 8, 2023, Tr. Vol. 1, 6:5-13 (Kirby/Spirit).

231. For example, in May 2019, Mr. Kirby presented a Five-Year Network Plan to Spirit's Board that anticipated Spirit could enter 29 new cities by the end of 2023. Tr. Ex. 285 at -072. To date, Spirit has entered 19 of the 29 airports listed in its plan, but it has also entered an *additional* 11 airports not listed during the five-year period of 2019 through 2023. Nov. 8, 2023, Tr. Vol. 1, 6:21-7:6, 11:21-12:7 (Kirby/Spirit); *see also id.* at 7:16-11:20 (Kirby/Spirit) (listing both the planned and new airports Spirit entered, referencing Kirby Demonstrative 3).

232. Spirit might also move around the order in which it enters cities. In Spirit's May 2019 Five-Year Network Plan, for example, Spirit planned to enter Nashville in 2020, but was able to enter in 2019; likewise, Spirit planned to enter Tegucigalpa in 2022, but entered in 2021.

Nov. 8, 2023, Tr. Vol. 1, 6:11-20 (Kirby/Spirit).

3. Spirit is a reliable airline with respect to entry and staying power

233. Spirit puts a lot of effort and analysis into determining which new cities to enter, Nov. 7, 2023, Tr. Vol. 2, 116:21-117:5 (Kirby/Spirit) (agreeing Spirit is methodical in its approach to entering new cities, invests in the cities, and usually feels "confident that [Spirit] can be successful" in routes to/from that city), and in determining which new routes to enter, Nov. 7, 2023, Tr. Vol. 2, 120:24-121:2 (Kirby/Spirit).

234. In fact, when Spirit enters a new airport or city, its assumption is that it will be in that city in perpetuity. Nov. 7, 2023, Tr. Vol. 2, 117:6-9 (Kirby/Spirit).

235. Likewise, when Spirit enters a new route, its assumption is that it will also be on that route forever. Nov. 7, 2023, Tr. Vol. 2, 120:20-23 (Kirby/Spirit); *see also* Nov. 3, 2023, Tr. Vol. 2, 98:1-5 (Klein/Spirit) (noting when Spirit enters a route, it intends to stay there "forever").

236. Historically, this thorough planning has meant fewer airport and market or route exits for Spirit compared to other ULCCs. Nov. 7, 2023, Tr. Vol. 2, 118:10-14 (Kirby/Spirit) (agreeing Spirit has been "stickier" in terms of staying power in airports than Frontier and Allegiant); *id.* at 121:3-6 (agreeing Spirit has historically exited fewer markets compared to other ULCCs); *see also* Kirby (Spirit) Lit. Dep. 177:18-178:9, May 26, 2023 (noting Spirit tries to "nurture a market towards success," which is "demonstrated in fewer market exits, fewer city exits, and so on").

237. In fact, Spirit represented to the DOT in its proposal to operate 16 peak-hour runway timings at Newark that "Spirit Has One of the Best Track Records Among Both Legacy and Low Fare Carriers for Serving Markets Over the Long-Term." Tr. Ex. 319 at -752.

238. Spirit's "staying power" is strong even in markets in which there is a dominant incumbent carrier, such as markets against United to/from Newark, markets against American

to/from Dallas-Fort Worth, and markets against Delta to/from Atlanta. Nov. 8, 2023, Tr. Vol. 1, 43:12-44:12 (Kirby/Spirit), discussing Tr. Ex. 319 at -746 ("Spirit Has a Well-Established History of Staying Power Against Dominant Incumbent Carriers at Newark and in Many other Domestic and International Markets."); *see also* Kirby (Spirit) Lit. Dep. 176:7-16, May 26, 2023.

239. Spirit's staying power is also strong in many of the largest markets by passenger volume in which it competes against JetBlue. *See* Nov. 7, 2023, Tr. Vol. 2, 109:4-111:1 (Kirby/Spirit), discussing Kirby Demonstrative 2 (agreeing that Spirit has continued to compete on many of the largest Spirit/JetBlue overlap routes by passenger volume since before Mr. Kirby joined Spirit in 2018).

240. For example, Mr. Kirby testified that Boston-Orlando; New York City-San Juan; Orlando-San Juan; Miami-San Juan; Boston-Miami; New York City-Orlando; and Miami-New York City are all popular routes in terms of passenger volume in which Spirit overlaps with JetBlue and has offered service for several years. Nov. 7, 2023, Tr. Vol. 2, 111:2-113:21 (Kirby/Spirit). Spirit has no plans to leave any of these large routes. *Id.* at 113:22-25.

4. Spirit is a reliable airline in terms of operational metrics

241. As Mr. Klein testified before the House of Representatives Transportation and Infrastructure Committee in March of 2020, Spirit has made "tremendous strides . . . in the past few years to become one of the most reliable airlines in the country" in terms of on-time performance, "completion factor (i.e., low cancellation rate)," and bag handling. Tr. Ex. 346 at -500.

242. Spirit continues to strive to be a reliable airline today with respect to these metrics. Klein (Spirit) Lit. Dep. 90:3-19, June 27, 2023, discussing Tr. Ex. 346 at -500. For example, coming out of the COVID-19 pandemic, Spirit reduced its aircraft utilization rates to give its operators a higher chance of being successful in terms of on-time performance. Nov. 7,

2023, Tr. Vol. 2, 90:13-21 (Kirby/Spirit). It is continuing to work to optimize its aircraft utilization within operational constraints. *Id.* at 90:22-91:5.

243. And, in the July 2022 DOT order granting Spirit the 16 Newark peak landing times, the DOT commented that "from January 2020 through April 2022, Spirit's cancellation rate was significantly lower than JetBlue's rate." Noting that, "[y]ear-to-date, . . . JetBlue's cancellation rate ha[d] risen to 5.7 percent, while Spirit's rate remained relatively steady at 2.9 percent." Tr. Ex. 221 at -215. The DOT also found that "[f]rom January 2020 through April 2022, Spirit also perform[ed] better on delays" than JetBlue, "with the lowest percentage of delayed flights resulting from carrier-related issues." *Id.* Spirit also had shorter delays than JetBlue and Spirit performed better than JetBlue with respect to baggage handling. *Id.* By the end of calendar year 2022, Spirit's total annual on-time performance ranked higher than JetBlue's, Frontier's, and Allegiant's. Bendoraitis (Spirit) Lit. Dep. 70:4-6, 209:1-17, June 14, 2023.

5. Spirit's network has grown significantly over the last five years

244. Spirit has grown substantially over the last five years, Oct. 31, 2023, Tr. Vol. 2, 114:9-11 (Christie/Spirit), growing faster than most, if not all, domestic airlines, including legacy carriers and LCCs, *id.* at 114:12-20; Klein (Spirit) Lit. Dep. 87:22-88:12, June 27, 2023 (noting Spirit continues to be one of, if not the, fastest-growing airlines in the United States); Nov. 2, 2023, Tr. Vol. 1, 30:13-20 (Clark/JetBlue) (acknowledging Spirit grew 87 percent in JetBlue markets in the three years prior to 2019); *id.* at 37:23-25, 38:12-21 (Clark/JetBlue), discussing Tr. Ex. 654 (noting that Spirit's ability to grow both its capacity and unit revenue as of December 2022 was "an impressive result").

245. Even with respect to ULCCs, as discussed *supra* Part I.A, Spirit has historically been among the fastest-growing, Oct. 31, 2023, Tr. Vol. 2, 115:9-13 (Christie/Spirit); *see also* Nov. 2, 2023, Tr. Vol. 1, 30:13-20 (Clark/JetBlue) (acknowledging Spirit grew 87 percent in

JetBlue markets in the three years prior to 2019); Beck (Delta) Lit. Dep. 98:22-25, 99:2-24, July 12, 2023 ([redacted]).

246. With respect to domestic growth, over the five years from 2018 to 2023, Spirit's compound annual growth rate as measured by ASMs, was the highest in the industry at 8.2 percent. Tr. Ex. 293 at -250. Spirit's growth rate was higher than JetBlue's (1.4 percent), as well as the rates of all legacy carriers and Southwest, which each had a growth rate of under 1 percent over this period. *Id.*; *see also* Nov. 8, 2023, Tr. Vol. 1, 15:20-24 (Kirby/Spirit), discussing Tr. Ex. 293 at -250. The compound annual growth rate for American over this period in terms of domestic growth was even a *negative* number at -.2 percent. Tr. Ex. 293 at -250; *see also* Nov. 8, 2023, Tr. Vol. 1, 15:25-16:1 (Kirby/Spirit), discussing Tr. Ex. 293 at -250; *see also* Tr. Ex. 285 at -064 (noting that between 2013 and 2018, Spirit's CAGR was 20.0 percent, far surpassing the next closest airline (Allegiant, 15.2 percent), and more than triple the rate of JetBlue (5.6 percent)).

247. This ASM growth is reflected in Spirit's new service on domestic routes over the last five years. For example, Spirit has been very successful launching new service at Charlotte, which it entered in 2019, so much so that the airport "moved some other carriers around and offered [Spirit] a second pref[erential] gate." Nov. 8, 2023, Tr. Vol. 1, 86:15-88:25 (Kirby/Spirit). Since then, Charlotte has offered Spirit a third preferential gate in its new concourse in the fall of 2024. *Id.*

248. Over this period, Spirit also opportunistically grew in cities that are generally constrained in terms of available infrastructure. Nov. 7, 2023, Tr. Vol. 2, 124:3-7, 131:18-

133:16, (Kirby/Spirit); Nov. 8, 2023, Tr. Vol. 1, 86:11-88:25 (Kirby/Spirit), discussing Tr. Ex. 331 at -227 (citing examples of Spirit's success growing even in airports it has identified as having "[i]nfrastructure [l]imits"); *see also infra* Part VII.B (regarding entry barriers). During the COVID-19 pandemic, specifically, Spirit took advantage of airports' reduced level of passenger travel to enter constrained cities. *See, e.g.*, Nov. 7, 2023, 132:18-133:17 (Kirby/Spirit) (offering Spirit's recent growth in LAX, where Spirit was able to obtain two additional gates during the COVID-19 pandemic due to a drop off in travel, as an example of Spirit's opportunistic growth in constrained cities); Nov. 8, 2023, Tr. Vol, 1, 84:15-85:12, 86:11-22 (Kirby/Spirit) (describing Spirit's ability to grow through the COVID-19 pandemic at Atlanta using international gates); Kirby (Spirit) 30(b)(6) CID Dep. 176:7-177:8, Jan. 12, 2023 ([redacted]). Since 2019, Spirit has also expanded in strategic markets, *i.e.*, top destinations where Spirit believes additional growth will make it more attractive to consumers. Kirby (Spirit) Lit. Dep. 38:2-20, May 26, 2023; Nov. 7, 2023, Tr. Vol. 2, 130:6-18 (Kirby/Spirit).

249. For example, as part of its strategy to expand its service to more routes touching the West Coast, Spirit added more western U.S. destinations, including Orange County, California; Burbank, California; Sacramento, California; Boise, Idaho; Albuquerque, New Mexico; Reno, Nevada; and Salt Lake City, Utah, to its network; Spirit flies routes to and from all of these destinations today. Nov. 7, 2023, Tr. Vol. 2, 130:19-131:17 (Kirby/Spirit).

250. Spirit has also witnessed impressive growth on international routes. Between year-end 2017 and year-end 2021, Spirit saw greater international ASM growth than all other ULCCs and LCCs analyzed by Spirit's Network Planning Group, including Alaska, Frontier, Allegiant, Sun Country, and Southwest. Tr. Ex. 310 at -111. By year-end 2021, Spirit was the

only carrier studied with over 2 billion international ASMs, surpassing the next highest, Southwest, by over 700 million international ASMs. *Id*.

6. Spirit plans to continue growing

251. Spirit is currently facing "very unique times" in terms of the various issues it has experienced this past year, exacerbated now by the GTF issue. Nov. 8, 2023, Tr. Vol. 1, 56:18-57:10 (Kirby/Spirit). So much so that Mr. Christie told Spirit's shareholders, even in August 2023, that this most recent quarter, the third quarter of 2023, would be "an anomaly" in terms of performance. Nov. 1, 2023, Tr. Vol. 2, 111:5-112:5 (Christie/Spirit), discussing Tr. Ex. 341 at -965. Mr. Klein likewise assured Spirit's shareholders in August 2023 that Spirit was facing "an acute situation," one that was "incredibly unique," and that Spirit "expect[ed] to see demand trends . . . bounce back." Tr. Ex. 341 at -968, -972-73. Scott Haralson, Spirit's CFO, further emphasized in Spirit's recent Third Quarter 2023 Results that, despite this anomaly, Spirit's team remained "resilient and nimble" and "committed to returning Spirit to sustained profitability." Tr. Ex. 678 at p. 2; Nov. 7, 2023, Tr. Vol. 1, 75:2-10 (Gardner/Spirit) (agreeing with this statement). And for the fourth quarter of 2023 and the first quarter of 2024, Spirit's October 26, 2023, Investor Update disclosed Spirit's expected ASM growth of 14 percent and 7 percent year-over-year, respectively. Nov. 7, 3034, Tr. Vol. 1, 12:22-24, 13:8-20 (Gardner/Spirit), discussing Tr. Ex. 680. In addition, Spirit has not issued any bankruptcy or going concern warnings. Nov. 7, 2023, Tr. Vol. 1, 75:12-14 (Gardner/Spirit).

252. The uniqueness of the current situation is further illustrated by the fact that, as of June 2023, prior to the most-recent engine issues coming to light, Spirit's CEO, Mr. Christie, was confident about Spirit's prospects, testifying Spirit had plans to increase its revenue over the next five years, Christie (Spirit) Lit. Dep. 135:7-10, June 6, 2023, to increase its routes over the next five years, *id.* at 135:15-19, and to continue to grow internationally, *id.* at 113:15-16,

113:19-20; 113:22-114:1; *see also* Tr. Ex. 227 at -977 (noting, during Spirit's first quarter 2023 earnings call, that Spirit had a "great outcome" with respect to its 39.5 percent revenue increase year-over-year from the first quarter of 2022); Tr. Ex. 243 at -006 (expressing confidence, during a May 5, 2022, earnings call, in Spirit's ability to return to full utilization and pre-COVID-19-pandemic profitability levels). And, as of June 2023, Spirit predicted a 13-17 percent compound annual growth rate ("CAGR") over the next five years, the same number it predicted Spirit could achieve in 2021. Oct. 31, 2023, Tr. Vol. 2, 115:14-116:2 (Christie/Spirit); *see also* Haralson (Spirit) Lit. Dep. 67:15-17, 67:20-68:2, June 7, 2023.

253. Spirit is not alone. Frontier, for example, experienced a loss in the third quarter of 2023 impacted by a supply and demand imbalance, operational issues, and rising fuel prices. Nov. 14, 2023, Tr. Vol. 1, 48:2-20 (Biffle/Frontier). Yet, notwithstanding these losses, Frontier continues to invest in its own ULCC growth plans by hiring workers and acquiring aircraft, hangar space, and airport gates. Nov. 14, 2023, Tr. Vol. 1, 42:23-43:8 (Biffle/Frontier). Mr. Biffle agreed that Frontier remains "committed to the ultra-low cost carrier [business model]" and believes it will get back to profitability. Nov. 14, 2023, Tr. Vol. 1, 50:19-25 (Biffle/Frontier).

254. Similarly, despite the issues it is facing, Spirit continues to improve its overall performance with respect to [redacted] on-time performance, product, and service offerings. Nov. 3, 2023, Tr. Vol. 1, 75:10-25 (Klein/Spirit); Christie (Spirit) Lit. Dep. 135:7-138:25, June 6, 2023. And, despite these recent issues, Spirit still plans to increase the size of its route network over the next five years, Oct. 31, 2023, Tr. Vol. 2, 116:13-15 (Christie/Spirit), including continued plans to add international service, *id.* at 116:16-18; Nov. 8, 2023, Tr. Vol. 1, 27:9-11 (Kirby/Spirit) (stating that Spirit has "continued to look for [international] opportunities"); *see also* Klein

(Spirit) Lit. Dep. 285:14-17, 285:19-20, June 27, 2023 (noting absent the Proposed Acquisition, Spirit would continue fighting for slots and gates at airports).

255. For example, Spirit recently received a third gate at Boston, which will allow Spirit to serve additional markets in 2024, including Boston to Charleston International Airport ("Charleston" or "CHS"), Boston to Norfolk International Airport ("Norfolk" or "ORF"), and Boston to IAH. Nov. 7, 2023, Tr. Vol. 2, 103:11-19 (Kirby/Spirit). Spirit is also looking at new potential destinations in popular leisure locations given the longer range of the A321neo aircraft, including flights to airports in [redacted]. Nov. 8, 2023, Tr. Vol. 1, 18:7-18 (Kirby/Spirit) (noting flights to [redacted] might be an option for Spirit as a standalone competitor "at some point in the future"), discussing Tr. Ex. 293 at -258. And Spirit is looking to enter more VFR routes touching Mexico and other routes to/from central America. Kirby (Spirit) Lit. Dep. 66:19-67:10, May 26, 2023. For example, as noted, Spirit recently announced plans to begin flying routes to and from Tulum, Mexico. Nov. 7, 2023, Tr. Vol. 2, 127:11-13 (Kirby/Spirit).

F. JetBlue Has Been Shifting Its Business Model To One More Akin To That Of A Legacy Arline

1. JetBlue's product increasingly targets higher-paying and less price-sensitive customers

256. JetBlue competes against all carriers, with legacy carriers on one end of the cost spectrum and ULCCs on the other. Nov. 3, 2023, Tr. Vol. 2, 152:7-153:3 (Hayes/JetBlue); Nov. 6, 2023, Tr. Vol. 1, 40:3-8, 55:6-14 (Hayes/JetBlue) (noting that JetBlue competes "across the spectrum" of travelers and competes against ULCCs for "a more price-sensitive leisure customer"); Nov. 9, 2023, Tr. Vol. 2, 101:20-25 (Friedman/JetBlue) (listing all of JetBlue's competitors, including legacies and Spirit).

257. JetBlue has been successful, including against legacies; Mr. Yealy of Avelo agreed JetBlue had been competing with legacies throughout JetBlue's history. Yealy (Avelo)

Lit. Dep. 124:20-125:7, June 27, 2023; *id.* at 125:9-126:7 (highlighting JetBlue's longevity in the airline industry as a "testament to their ability to compete with the legacy airlines . . . they've found a way to compete as a stand-alone entity"); *id.* at 124:20-125:7 (explaining he did not believe the Proposed Acquisition to be "a requirement or a requisite in order [for JetBlue] to compete with the legacy airlines"); *see also* Nov. 16, 2023, Tr. Vol. 1, 42:23-48:19 (Lage/Spirit) (discussing Lage Demonstrative E and fare filing characteristics indicating Big Four competitive responses to JetBlue).

258. JetBlue has had success competing against legacy carriers in part because JetBlue has a lower-cost structure than legacy airlines. Nov. 3, 2023, Tr. Vol. 2, 152:7-10 (Hayes/JetBlue). But in addition, JetBlue's product, which includes as part of all base fares a 32-inch seat pitch,[6] Nov. 6, 2023, Tr. Vol. 1, 76:11-25 (Hayes/JetBlue), plus Wi-Fi, snacks, and TV, Nov. 3, 2023, Tr. Vol. 2, 160:15-17 (Hayes/JetBlue), is intended to compete with the products of legacy airlines, Nov. 6, 2023, Tr. Vol. 1, 80:21-81:7 (Hayes/JetBlue). For example, as Mr. Hayes testified, "Delta . . . in response to us, is rolling out free [Wi-Fi] as well, although you do have to be a member of their loyalty program to qualify for it." Nov. 6, 2023, Tr. Vol. 1, 79:10-21 (Hayes/JetBlue).

259. JetBlue sees its loyalty program as a way of attracting passengers from competitors. Nov. 6, 2023, Tr. Vol. 1, 67:16-68:6 (Hayes/JetBlue). Recently, in fact, JetBlue initiated several changes to its frequent flier program, including the mid-2023 launch of its TrueBlue program, introducing both benefits for infrequent fliers as well as different tiers within its Mosaic program so that frequent flyers can obtain Mint upgrade certificates. Hayes (JetBlue) Lit. Dep. 101:21-103:9, June 14, 2023.

[6] "Seat pitch" is the distance between seats on an aircraft, specifically the measurement from one spot on a seat to the exact same spot on the seat behind or in front of it. Nov. 3, 2023, Tr. Vol. 2, 130:17-131:4 (Klein/Spirit).

260. In addition, JetBlue's size in focus cities, like Boston, has enabled JetBlue to attract a loyal customer base in those cities, akin to legacy airlines' pull in their hub cities. *See* Nov. 9, Tr. Vol. 2, 113:20-115:11 (Friedman/JetBlue), discussing Tr. Ex. 695.

261. JetBlue also believes it is able to compete effectively against legacies in ways other LCCs cannot. Nov. 6, 2023, Tr. Vol. 1, 39:24-40:12 (Hayes/JetBlue). JetBlue, for example, can compete for all travelers, including business travelers and high-margin leisure travelers. *Id.*

262. To this end, JetBlue has aimed to grow its business traveler segment, a more cost-intensive segment traditionally targeted by legacy or network carriers, *supra* Part II.A.2, which is the group most willing to pay higher fares, Hayes (JetBlue) Lit. Dep. 106:10-107:1, June 14, 2023; *accord* Nov. 3, 2023, Tr. Vol. 2, 165:2-8 (Hayes/JetBlue).

263. In fact, JetBlue entered the Northeast Alliance ("NEA") with American in part because it thought the NEA would help JetBlue attract more business travelers. Nov. 3, 2023, Tr. Vol. 2, 166:2-5 (Hayes/JetBlue).

264. JetBlue has adopted a relatively high-frequency schedule, aimed at attracting business travelers, in some markets touching Boston. Nov. 3, 2023, Tr. Vol. 2, 162:17-163:5 (Hayes/JetBlue).

265. JetBlue believes this high-frequency approach on certain Boston-based routes has been successful in attracting corporate customers. Nov. 3, 2023, Tr. Vol. 2, 161:24-162:16 (Hayes/JetBlue). And today, JetBlue has a "large corporate presence" in Boston. Nov. 9, 2023, Tr. Vol. 2, 122:20-123:3 (Friedman/JetBlue).

266. JetBlue also targets last-minute ticket purchasers as they tend to be business travelers who are generally willing to pay a higher fare as their travel is more inelastic. Nov. 3, 2023, Tr. Vol. 2, 164:13-165:16 (Hayes/JetBlue), discussing Tr. Ex. 675 at -699.

267. In addition, as noted *supra* Part I.B, to appeal to business travelers, in 2014, JetBlue introduced the first-ever transcontinental lie-flat business seat and has since introduced the domestic Mint product to nearly 40 aircraft with plans to grow to 50 aircraft with the Mint product. Nov. 9, 2023, Tr. Vol. 2, 141:19-142:4 (Friedman/JetBlue). JetBlue's Mint product has proven to be competitive with legacy airlines' "[l]ie-flat transcon" products, including those of American and Delta. Tr. Ex. [redacted] at -741.

268. JetBlue's recent launch of its transatlantic Mint service to London has also proven an effective move to attract more premium customers away from legacy airlines, as JetBlue's introduction proved highly disruptive against legacies in those markets, reducing business class fares by 30 percent versus what they had been prior to JetBlue's entry. Nov. 2, 2023, Tr. Vol. 2, 160:23-162:3 (Clark/JetBlue), discussing Tr. Ex. 614 at -602.

2. JetBlue has shifted its focus away from the traditional LCC model, toward a more high-cost, high-fare model

269. While JetBlue's product may help it compete with legacies, JetBlue acknowledged that these product features make it such that it "costs more [for JetBlue] to provide [its] product"; JetBlue has a higher cost structure than Spirit. Nov. 3, 2023, Tr. Vol. 2, 151:23-152:6 (Hayes/JetBlue).

270. As Spirit presented to the DOT in a 2021 complaint, JetBlue's CASM (adjusted for stage length[7]) has become "significantly higher than all LCC and ULCC Competitors," making JetBlue "[c]onstrain[ed] in its ability to compete as an LCC. Tr. Ex. 340 at -400; *id.* at -402 ("JetBlue is shifting its business model away from a traditional LCC"). Because of JetBlue's increasingly higher-cost model, Spirit represented to the DOT, JetBlue "has consistently raised

[7] "Stage length" is the distance in miles between the two points on a route. Bartolotta (Spirit) Lit. Dep. 47:20-24, June 13, 2023.

fares and adopted a business model matching those of the legacy carriers rather than low-cost carriers or ultralow-cost carriers." Tr. Ex. 340 at -371, ¶ 11; *id.* at -398 ("JetBlue Has Maintained and Increased Average Fares… [and] is now trending towards levels similar to those realized by Legacy carriers"); *id.* at -397 (noting JetBlue's "CASM ha[d] been significantly higher than LCC/ULCC competitors" for the prior five years); *accord* Nov. 3, 2023, Tr. Vol. 1 51:20-52:9 (Klein/Spirit), discussing Tr. Ex. 340 (agreeing that JetBlue's fare trends have been higher than all its LCC and ULCC competitors "overall for a few years"); Klein (Spirit) Lit. Dep. 239:21-240:4, June 27, 2023 (agreeing that JetBlue's CASM likely remains higher than Spirit's, Frontier's, and Allegiant's).

271. Southwest has also observed that JetBlue has "been on a multiyear evolution away from a[n] [LCC] model," and is "becoming more like a legacy." Decaire (Southwest) Lit. Dep. 129:7-130:17, June 22, 2023. For example, JetBlue has started charging for bags, they have started to add first-class-type seating, and they have introduced a basic economy product. *Id.* at 130:4-17. In addition, JetBlue has gone from a single fleet type, as LCCs generally have, to three fleet types, and offers a premium transatlantic product. *Id.* at 132:1-15.

3. The impact JetBlue's entry in a market has on market-wide average fares, the "JetBlue Effect," is less than the Spirit Effect

272. As discussed *supra* Part II.D.7, regarding the Spirit Effect, when Spirit enters a new market, typically fares drop and passengers increase in that market, not just for Spirit's customers, but for all customers flying that route.

273. JetBlue has likewise identified a "JetBlue Effect": when it enters a high-fare market with lower fares, it stimulates traffic in that market, Nov. 2, 2023, Vol. 2, 151:1-13 (Clark/JetBlue), and lowers fares amongst legacy carriers on that route, Nov. 6, 2023, Tr. Vol. 1, 38:23-39:8 (Hayes/JetBlue). By stimulating passenger demand more rapidly than causing fares to

decrease, JetBlue benefits in the higher volume leading to more revenue. Nov. 9, 2023, Tr. Vol. 2, 93:23-94:14 (Friedman/JetBlue).

274. The lowering of fares from JetBlue's entry into a market results from both JetBlue's low fares and the impact JetBlue's competition has on the fares of higher-cost legacy airlines. Nov. 6, Tr. Vol. 1, 39:1-4 (Hayes/JetBlue).

275. The JetBlue Effect is still real, *see infra* Part V.D.1, but JetBlue's evolution from "the low-cost carrier it claimed to be in the 2011-2014 period" to something resembling more like a legacy or hybrid carrier, Tr. Ex. 340 at -371 ¶11, has impacted the significance of the effect JetBlue's entry into a market has on the market's fares and passenger volume.

276. For example, Brian Znotins, testifying as a corporate representative for American, clarified that he did "not agree" with the statement that JetBlue's fares generally lead to lower fares from other airlines that serve the same route. Znotins (American) Lit. Dep. 79:17-19, 79:22, June 23, 2023.

277. And during the period in which Spirit was resisting JetBlue's acquisition overtures, Spirit concluded that the JetBlue Effect was not more effective than the Spirit Effect in driving down fares. Oct. 31, 2023, Tr. Vol. 2, 124:21-125:20 (Christie/Spirit); *infra* Part III.C. This is consistent with the findings of Plaintiffs' expert in this case. *Infra* Part V.D.1.

278. Other ULCCs beside Spirit have similarly observed that the JetBlue Effect does not have the same impact on stimulating volume because JetBlue does not offer as many low fares. Nov. 14, 2023, Tr. Vol. 1, 42:1-42:19 (Biffle/Frontier); *see also infra* Part V.D.1 (analyzing the Spirit Effect versus the JetBlue Effect).

III. THE PROPOSED ACQUISITION OF SPIRIT BY JETBLUE

A. Overview Of JetBlue's Proposed $3.8 Billion Acquisition Of Spirit

1. Purchase terms

279. Under the terms of the current JetBlue-Spirit Agreement and Plan of Merger (the "Acquisition Agreement"), JetBlue will acquire Spirit for $3.8 billion. Nov. 2, 2023, Tr. Vol. 1, 70:17-19 (Clark/JetBlue); *see also* Tr. Ex. 86 at -833, -835; *see generally* Tr. Ex. 425 (containing the Acquisition Agreement). JetBlue will pay Spirit's shareholders $33.50 per share in cash. Tr. Ex. 425 at -634; Tr. Ex. 86 at -833; Nov. 6, 2023, Tr. Vol. 1, 20:20-23 (Hayes/JetBlue).

280. In the event that the Proposed Acquisition is not consummated by or before December 2023, the amount JetBlue will pay Spirit shareholders will increase over time to an ultimate $34.15 per share if the Proposed Acquisition is consummated at the outside date of July 24, 2024. Tr. Ex. 86 at -835; Tr. Ex. 425 at -707 (identifying July 24, 2024 as the "Second Extended Outside Date").

281. At the time of the trial, Spirit shareholders had already received a $2.50-per-share prepayment in cash upon their approval of the Proposed Acquisition. Tr. Ex. 86 at -833, -835; *see also* Nov 6, 2023, Tr. Vol. 1, 20:7-15 (Hayes/JetBlue). Since January 2023, Spirit shareholders have also received payment in the form of a $0.10-per-month ticking fee, which will continue until closing. Tr. Ex. 86 at -833, -835; *see also* Nov 6, 2023, Tr. Vol. 1, 20:13-22 (Hayes/JetBlue).

2. JetBlue's commitment to pay a $470 million reverse break-up fee

282. The Acquisition Agreement contains a combined reverse break-up fee of $470 million. Nov. 1, 2023, Tr. Vol. 2, 124:23-125:1 (Christie/Spirit). The reverse break-up fee compensates Spirit shareholders if the Proposed Acquisition is not consummated for antitrust reasons. Nov. 1, 2023, Tr. Vol. 2, 125:2-10 (Christie/Spirit); *see also* Tr. Ex. 425 at -709. Spirit's

CEO, Ted Christie, described the $470 million combined fee as "a near record" for a transaction of this size. Nov. 1, 2023, Tr. Vol. 2, 83:12-24 (Christie/Spirit).

3. Retention program provisions reward Spirit executives who remain employed through closing of the Proposed Acquisition

283. The Acquisition Agreement includes a retention program, which uses monetary awards to incentivize Spirit management to remain at the company through the course of the transaction review process. Nov. 1, 2023, Tr. Vol. 2, 124:7-17 (Christie/Spirit). The retention program covers senior executives as well as other persons deemed critical to the management team. Nov. 7, 2023, Tr. Vol. 1, 56:19-57:8 (Gardner/Spirit); *see also* Tr. Ex. 425 at -784-87 (laying out the terms of the JetBlue-Spirit retention program in subsection 9). Mr. Christie expects to receive over $1 million in additional payments through the retention program if he remains employed at Spirit through the closing of the Proposed Acquisition. Oct. 31, 2023, Tr. Vol. 2, 148:21-149:24 (Christie/Spirit). Mr. Klein, Mr. Kirby, and numerous other Spirit employees also have bonus agreements under the retention program. Klein (Spirit) Lit. Dep. 363:19-24, 364:4-10, 364:19-365:3, 365:8-367:9, June 27, 2023; Kirby (Spirit) Lit. Dep. 285:4-15, May 26, 2023; Christie (Spirit) CID Dep. 337:1-16, 334:1-9, Jan. 24, 2023 (noting that the retention bonus program covers Spirit's executives, managers, and individual contributors).

B. The Public Fight For Control Of Spirit

284. During the spring and early summer of 2022, JetBlue and Frontier made public, competing bids to acquire Spirit. *See generally* Nov. 7, Tr. Vol. 1, 13:23-28:22 (Gardner/Spirit) (discussing the timeline of the competing JetBlue and Frontier bids).

285. Spirit, in turn, issued public comments, presentations, and filings with the U.S. Securities and Exchange Commission ("SEC") conveying its analysis of the strength of each carrier's proposal, including Spirit's assessment of the competitive harms that would result from

an acquisition of Spirit by JetBlue. *Infra* Part III.C.

286. From early May to late June 2022, as this battle for control of Spirit unfolded, Spirit reiterated to its investors and the public that an acquisition of Spirit by JetBlue would be bad for consumers, as "[a]t its core, the JetBlue proposal [to buy Spirit] represents a high-cost, high-fare airline buying a low-cost, low-fare airline with half the synergies coming from reduced capacity and increased fares," and the acquisition would "eliminate a key competitor" of JetBlue's. Oct. 31, 2023, Tr. Vol. 2, 131:5-10 (Christie/Spirit); Tr. Ex. 349 at -898; *infra* Part III.C.

1. Frontier-Spirit: 2021 to February 2022

287. In the summer of 2021, Spirit's and Frontier's respective management teams became involved in negotiations which culminated in a merger agreement signed on February 5, 2022 and publicly announced on February 7, 2022. Nov. 7, 2023, Tr. Vol. 1, 13:23-14:3 (Gardner/Spirit); Tr. Ex. 297 at -865; Tr. Ex. 108 at -914. Mr. Christie and the rest of Spirit's Board of Directors supported the proposed transaction with Frontier in February 2022. Oct. 31, 2023, Tr. Vol. 2, 117:18-23 (Christie/Spirit).

288. After learning about Frontier's bid to acquire Spirit, JetBlue CEO Robin Hayes had discussions with JetBlue's Board of Directors, as well as Mr. Christie, about making a competing bid for Spirit. Nov. 6, 2023, Tr. Vol.1, 16:23-17:4 (Hayes/JetBlue).

2. JetBlue's initial pursuit of Spirit: late March to early May 2022

289. On March 29, 2022, JetBlue submitted a proposal to acquire Spirit, offering Spirit shareholders a cash bid of $33 per share, amounting to $3.6 billion total. Tr. Ex. 114 at -084; *see also* Nov. 1, 2023, Tr. Vol. 1, 57:13-19 (Christie/Spirit); *see generally* Tr. Ex. 210 (comprising JetBlue's March 29, 2022 offer to acquire Spirit, as emailed by Mr. Hayes to Mr. Christie on that date). JetBlue indicated in its March 29, 2022 offer letter a willingness to agree to a reverse

break-up fee payable to Spirit if an acquisition by JetBlue were not consummated for antitrust reasons, but JetBlue did not propose a dollar figure for said fee. Tr. Ex. 113 at -076; Tr. Ex. 114 at -081.

290. Toward the end of April 2022, before Spirit had publicly responded to the March 29 offer, JetBlue sent Spirit a revised acquisition offer. This revised offer included a reverse break-up fee of $200 million, representing the amount JetBlue would pay Spirit's shareholders if the contemplated deal ultimately did not pass regulatory scrutiny. Oct. 31, 2023, Tr. Vol. 2, 119:13-20 (Christie/Spirit); Tr. Ex. 124 at -924.

291. On May 2, 2022, Spirit's Board of Directors unanimously rejected JetBlue's revised proposal to purchase Spirit for $33 per share. Oct. 31, 2023, Tr. Vol. 2, 120:16-18 (Christie/Spirit); *see generally* Tr. Ex. 38 (relaying, through a May 2, 2022 press release, Spirit's rejection of JetBlue's acquisition offer). On that same day, Spirit issued a press release attaching a letter from Mr. Christie and H. McIntyre Gardner, the Chairman of Spirit's Board, to Mr. Hayes, setting forth Spirit's concerns about a JetBlue acquisition of Spirit. Tr. Ex. 38 at -118; Oct. 31, 2023, Tr. Vol. 2, 122:23-123:5 (Christie/Spirit)*; see also infra* Part III.C.

292. Shortly thereafter, on May 5, 2022, Spirit held an earnings call and filed a related presentation titled "JetBlue's Illusory Offer Is Not Superior" with the SEC. Oct. 31, 2023, Tr. Vol. 2, 129:11-23, 130:24-131:1 (Christie/Spirit), discussing Tr. Ex. 349.

3. JetBlue's hostile takeover bid: mid-to-late May 2022

293. On May 16, 2022, JetBlue responded to the Spirit Board of Directors' rejection of its proposal by going directly to Spirit's shareholders with a tender offer to buy outstanding Spirit shares. Oct. 31, 2023, Tr. Vol. 2, 126:7-12 (Christie/Spirit); Tr. Ex. 106 at -890.

294. Spirit's Board continued to oppose an acquisition by JetBlue and to support a transaction with Frontier. Oct. 31, 2023, Tr. Vol. 2, 126:13-127:8 (Christie/Spirit).

4. JetBlue's revised offers and Spirit's continued opposition: June 2022

295. Throughout June 2022, JetBlue made a series of revised offers to acquire Spirit, which Spirit continued to resist, citing continued concerns about the anticompetitive nature of such an acquisition. Oct. 31, 2023, Tr. Vol. 2, 143:15-23 (Christie/Spirit); Tr. Ex. 93 at -998-99; s*ee also infra* Part III.C.

296. On June 6, 2022, Mr. Christie received an email from Mr. Hayes with an attached new, revised offer for Spirit Airlines. Nov. 1, 2023, Tr. Vol. 1, 74:23-75:16 (Christie/Spirit), discussing Tr. Ex. 127 at -470-71. And, on June 27, 2022, JetBlue made a further amended offer to purchase Spirit; the Spirit Board did not view this amended offer as better and did not accept it. Nov. 7, 2023, Tr. Vol. 1, 24:15-25:14 (Gardner/Spirit), discussing Tr. Ex. 682 at -334-35.

297. Spirit issued another press release on June 28, 2022, reaffirming its commitment to the transaction with Frontier, and noting that the "latest offer from JetBlue does nothing to address our Board's serious concerns that a combination with [JetBlue] would not receive regulatory approval." Tr. Ex. 93 at -998.

5. Termination of the Frontier-Spirit agreement and the JetBlue-Spirit agreement: July 2022

298. As late as July 12, 2022, Spirit's Board was still unanimously in favor of a Frontier-Spirit transaction. Nov. 7, 2023, Tr. Vol. 1, 28:8-14 (Gardner/Spirit), discussing Tr. Ex. 223 at -330.

299. Mr. Christie agreed that Spirit leadership continued to support a Frontier-Spirit transaction up until the moment they saw that Spirit shareholder votes would fall decidedly against approval, Nov. 1, 2023, Tr. Vol. 2, 122:3-16 (Christie/Spirit), and until Frontier pulled its proposal, Oct. 31, 2023, Tr. Vol. 2, 145:25-146:9 (Christie/Spirit).

300. Nevertheless, seeing the direction its shareholders were likely to vote, Spirit chose

to resume negotiations with JetBlue on a potential acquisition of Spirit. Oct. 31, 2023, Tr. Vol. 2, 146-20-147:3 (Christie/Spirit).

301. On July 27, 2022, Spirit and Frontier terminated their merger agreement. Nov. 7, 2023, Tr. Vol. 1, 28:17-19 (Gardner/Spirit); *see also* Tr. Ex. 85 at -823. This was done before Spirit shareholders could ever participate in a much-delayed final vote on the deal; it was clear Spirit shareholders would not vote in favor of the Frontier-Spirit agreement. Oct. 31, 2023, Tr. Vol. 2, 145:12-20 (Christie/Spirit); *see also* Tr. Ex. 683 at -964 (sharing Mr. Christie's view, as of June 29, 2022, that "the [shareholder] vote [was] moving quickly against" a Frontier-Spirit deal); Tr. Exs. 87, 88, and 90 (announcing the postponement, on three separate occasions in June and July of 2022, of Spirit's Special Meeting of Stockholders originally intended as the forum for voting on the Frontier-Spirit deal).

302. On July 28, 2022, JetBlue and Spirit entered into the Acquisition Agreement. Nov. 7, 2023, Tr. Vol. 1, 28:20-22 (Gardner/Spirit); *see also* Tr. Ex. 425 at -627. Spirit shareholders voted to approve the Acquisition Agreement on October 19, 2022. Tr. Ex. 84 at -818.

303. The final per-share price JetBlue agreed to pay for Spirit represented a more than 50-percent premium over the trading price of Spirit's shares just before the Frontier bid, Nov. 6, 2023, Tr. Vol. 1, 20:3-20:6 (Hayes/JetBlue), and Mr. Gardner testified that "it turned out that [Spirit] shareholders were very much interested in cash," Gardner (Spirit) Lit. Dep. 205:24-206:19, June 27, 2023.

C. Spirit And Frontier Expected That An Acquisition By JetBlue Would Harm Competition

304. Throughout the long fight for control of Spirit, Spirit's Board and executives assessed—and communicated to shareholders—that JetBlue acquiring Spirit "would raise fares

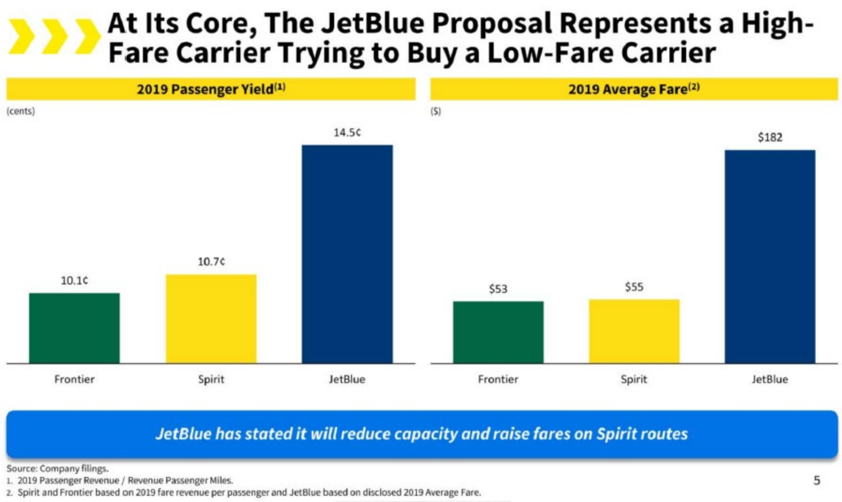
and reduce capacity, exactly what the antitrust laws were designed to prevent." Tr. Ex. 93 at -999; Nov. 7, 2023, Tr. Vol. 1, 26:13-27:3 (Gardner/Spirit) (discussing this language from the June 28, 2022 Spirit press release).

305. One of Spirit's concerns, which it presented to the public, was that a "higher-cost/higher-fare airline [*i.e.*, JetBlue] would be eliminating a lower-cost/lower-fare airline [*i.e.*, Spirit]." Tr. Ex. 38 at -119; *see also* Oct. 31, 2023, Tr. Vol. 2, 123:6-23 (Christie/Spirit). Spirit reiterated the same idea to its shareholders in an investor presentation which explained that "[a]t its core, the JetBlue proposal [to buy Spirit] represents a high-cost, high-fare airline buying a low-cost, low-fare airline with half the synergies coming from reduced capacity and increased fares" and that a JetBlue-Spirit merger would "eliminate a key competitor" of JetBlue's. Tr. Ex. 349 at -898; *see also* Oct. 31, 2023, Tr. Vol. 2, 131:5-10 (Christie/Spirit). Such an acquisition of Spirit by JetBlue, Spirit contended, would eliminate "about half of the ULCC capacity in the United States." Tr. Ex. 38 at -119; Oct. 31, 2023, Tr. Vol. 2, 124:5-13 (Christie/Spirit).

306. Mr. Christie testified that, although Spirit "did not do any analysis on synergies," Spirit had "see[n] a presentation from JetBlue" that elicited Spirit's concern, reiterated in the May 5, 2022 presentation, that JetBlue's estimated synergies would come from increased fares and reduced capacity. Oct. 31, 2023, Tr. Vol. 2, 131:19-132:7 (Christie/Spirit).

307. Spirit also represented to investors in the May 5, 2022 presentation that Spirit "continues to be a check on JetBlue's fares," showing that JetBlue's fares dropped after Spirit entered several overlap routes. Oct. 31, 2023, Tr. Vol. 2, 134:1-13 (Christie/Spirit), discussing Tr. Ex. 349 at -902. Spirit highlighted throughout the presentation that Spirit's fares were lower than those of JetBlue, even when including ancillary fees. Oct. 31, 2023, Tr. Vol. 2, 133:5-18 (Christie/Spirit); Tr. Ex. 349 at -901; *see also* Christie (Spirit) Lit. Dep. 272:6-19, June 6, 2023

(confirming the inclusion of ancillary fees in the reference to "average fare" in Tr. Ex. 349 at -901).



[8]

308. Spirit told its investors that JetBlue's claim about the JetBlue Effect has "significant defects and overstates the impact of JetBlue on legacy carriers." Tr. Ex. 349 at -898. In its May 2, 2022 press release, Spirit's Board also expressed skepticism, based on its financial advisors' reviews of the summary output of JetBlue's economic model received from JetBlue, of the potency of the "so-called 'JetBlue Effect'" compared to the Spirit Effect. Oct. 31, 2023, Tr. Vol. 2, 124:21-125:20 (Christie/Spirit), discussing Tr. Ex. 38 at -119. Spirit also raised certain "obvious antitrust red flags" to its proxy advisors, including that JetBlue's purported JetBlue Effect "is smaller in absolute terms and diminishes over time" compared to ULCCs' impacts on a market. Tr. Ex. 351 at -189.

309. Spirit argued publicly that "JetBlue's proposals and offer are a cynical attempt to disrupt Spirit's transaction with Frontier, which JetBlue views as a competitive threat." Tr. Ex. 105 at -881, -884. Similarly, a Spirit presentation filed with the SEC on May 25, 2022 suggested that JetBlue only sought to acquire Spirit to keep Frontier from doing so. Tr. Ex. 351 at -203-04

[8] Tr. Ex. 349 at -901.

("We Believe JetBlue's Real Motivation Is to Break Up the Spirit/Frontier Merger").

310. JetBlue's internal documents illustrate that it *did* view a potential Frontier-Spirit merger as a threat. *See* Nov. 6, 2023, Tr. Vol. 1, 13:16-14:4 (Hayes/JetBlue), discussing Tr. Ex. 615 at -876 (noting, in an internal strategy deck from June 2021, JetBlue's concerns, given the "many synergies and voracious growth appetites" of Spirit and Frontier, that "[a] merger between the two would introduce new margin pressures and possibly lower [JetBlue's] market position even further"). JetBlue even identified a possible Frontier-Spirit transaction as a business risk that could affect JetBlue's competitiveness in its 2021 10-K. Nov. 6, 2023, Tr. Vol. 1, 15:2-16:11 (Hayes/JetBlue), discussing Tr. Ex. 24 at -879 (noting that a combined Frontier-Spirit, if approved, "is expected to be a larger competitor to JetBlue, which may affect [JetBlue's] competitiveness").

311. Even as May 2022 ended, Spirit continued to tell its shareholders and proxy advisers that a potential JetBlue-Spirit combination would be bad for consumers, leading to higher ticket prices and the removal of 50 percent of domestic ULCC capacity. Oct. 31, 2023, Tr. Vol. 2, 139:7-140:6 (Christie/Spirit), discussing Tr. Ex. 350 at -217. On May 23, 2022, for example, Mr. Christie reiterated that the JetBlue proposal was "taking seats out and raising fares," which he described as "not a pro-consumer pro-competitive argument." Tr. Ex. 681 at -153.

312. Spirit argued that these antitrust red flags meant that an acquisition of Spirit by JetBlue would remain anticompetitive even in the event that the NEA, JetBlue's alliance with American, were blocked, noting that, even absent the NEA, the end result was "[s]till a high-fare airline trying to buy a low-fare airline and raise fares." Tr. Ex. 351 at -201; *see also* Tr. Ex. 350 at -215.

313. Frontier publicly echoed Spirit's warnings about the JetBlue bid in a press release emphasizing that JetBlue's announced plans to remove seats on Spirit's planes (as a way to increase JetBlue's margins) would cause post-acquisition fares to go up by an estimated 40 percent. Nov. 14, 2023, Tr. Vol. 1, 68:1-69:4 (Biffle/Frontier), discussing Tr. Ex. 705 at -476-77; *see also* Christie (Spirit) Lit. Dep. 286:24-287:17, 288:19-289:4, 289:8-10, June 6, 2023 (describing Spirit's review of the Frontier press release and Spirit's similar concern to Frontier's "that there would be a capacity reduction as a result of [JetBlue's planned] aircraft [re]configuration").

D. Spirit Expressed Concerns That The Acquisition Review Process Would Dampen The Company's Performance

314. In press releases and investor presentations, Spirit expressed concerns that the regulatory uncertainty arising from the competing offers posed a significant business disruption risk for Spirit, and Mr. Gardner warned that pursuing an acquisition by JetBlue could lead to a "long and bleak limbo period" for Spirit. Nov. 7, 2023, Tr. Vol. 1, 16:6-18 (Gardner/Spirit); Tr. Ex. 105 at -881-82. In its May 23, 2022 investor presentation, Spirit warned its investors that "targets of failed mergers" experienced average market underperformance of 25 percent. Tr. Ex. 350 at -219.

315. Mr. Christie recalled remarking, during the bidding war in 2022, that Spirit would "wither" while waiting for antitrust approval. Nov. 1, 2023, Tr. Vol. 2, 98:14-20 (Christie/Spirit). Mr. Christie acknowledged that he had a concern that the lengthy antitrust review process would disrupt Spirit's business and be a "distraction." Nov. 1, 2023, Tr. Vol. 2, 97:13-98:8 (Christie/Spirit). The risk of this disruption was sufficiently material to be listed as a separate risk factor to Spirit's business in its SEC filings. Nov. 1, 2023, Tr. Vol. 2, 98:9-13 (Christie/Spirit); *see also* Tr. Ex. 39 at -459 (noting that "[t]he pendency of the proposed Merger

may cause disruption in our business”).

E. Proposed Divestitures Included In The Proposed Acquisition Agreement

316. During the mid-2022 back-and-forth between Frontier and JetBlue, JetBlue initially proposed divestitures in airports touching New York City, Boston, and Fort Lauderdale in its April 29, 2022 offer to acquire Spirit. Christie (Spirit) Lit. Dep., 218:13-219:9, June 6, 2023, discussing Tr. Ex. 124 at -924. JetBlue ultimately agreed to seek a small set of divestitures at Newark Liberty International Airport (“Newark” or “EWR”), LaGuardia Airport (“LaGuardia” or “LGA”), Boston Logan International Airport (“Boston,” “Boston Logan,” or “BOS”), and Fort Lauderdale-Hollywood International Airport (“Fort Lauderdale” or “FLL”), specifically. Oct. 31, 2023, Tr. Vol. 2, 144:10-14 (Christie/Spirit).

317. These divestitures, according to Mr. Christie, are the same divestitures contemplated as part of the current Proposed Acquisition; no airports have been added to the divestiture package since April of 2022. Oct. 31, 2023, Tr. Vol. 2, 144:10-19 (Christie/Spirit).

318. Since signing the Acquisition Agreement, JetBlue has reached agreements to divest party assets at this handful of airports to either Allegiant or Frontier. *See infra* Part VII.C (discussing the details of JetBlue’s proposed divestiture agreements).

319. As to Allegiant, this includes an agreement to sell all of Spirit’s assets in Newark (including two gates and related operating authorizations and ground facilities), all of Spirit’s Boston assets (including two gates and related facilities), and certain JetBlue assets at Fort Lauderdale (including five gates and related ground facilities). Tr. Ex. 246 at -890, -892 -901, -915, -917-18; Nov. 14, 2023, Tr. Vol. 2, 145:8-11, 140:19-22, 146:16-20 (Wells/Allegiant); Land (JetBlue) 30(b)(6) Lit. Dep. 44:17-25, June 23, 2023*; see also infra* Part VII.C (discussing the details of JetBlue’s divestiture agreement with Allegiant).

320. JetBlue has, likewise, reached an agreement to sell Spirit’s LaGuardia assets

(including 22 slots and six gates) to Frontier. Nov. 6, 2023, Tr. Vol. 2, 119:2-7 (Hayes/JetBlue); Tr. Ex. 360 at -763, -764, -787-89; *see also infra* Part VII.C (discussing the details of JetBlue's divestiture agreement with Frontier).

321. The divestitures to Allegiant and Frontier are limited to airport-level assets; they do not include access to pilots or aircraft. Nov. 6, 2023, Tr. Vol. 2, 127:18-24 (Hayes/JetBlue).

322. The divestiture agreements do not obligate Allegiant or Frontier to fly any particular route(s) using the divested assets. Nov. 6, 2023, Tr. Vol. 2, 127:25-128:3 (Hayes/JetBlue).

323. As further discussed *infra* Part VII.C., these proposed divestitures are subject to external approvals which have not been received and are insufficient to address competitive harm arising from the Proposed Acquisition.

F. JetBlue Will Be Forced To Take On Significant Debt As A Result Of The Proposed Acquisition

324. JetBlue has, historically, managed its debt and liquidity levels very conservatively, and it, historically, targeted a debt-to-capital ("debt-to-cap") ratio of 30 to 40 percent. Nov. 17, 2023, Tr. Vol. 1, 15:19-16:1, 16:23-25 (Hurley/JetBlue). For instance, in 2019, JetBlue's debt-to-cap ratio was 34 percent. *Id.* at 17:1-3.

325. This conservatism has enabled JetBlue to borrow and raise money, Hayes (JetBlue) Lit. Dep. 172:2-11, June 14, 2023, and to secure better financing terms for new aircraft acquisitions, *id.* at 172:19-22.

326. However, JetBlue's debt-to-cap ratio has increased recently, rising to approximately 50 percent in 2022. Tr. Ex. 428 at -838. Without the Proposed Acquisition, in 2022, JetBlue planned to reduce its debt-to-cap ratio closer to its historical targets—to about 44 percent in 2023, 40 percent by 2024, and roughly 30 percent from 2025 to 2027. *Id.*

327. In January 2022, JetBlue contemplated three growth alternatives as a standalone competitor. Nov. 2, 2023, Tr. Vol. 1, 67:4-68:5 (Clark/JetBlue). Each of these growth alternatives would have required the acquisition of additional aircraft, including one plan that called for JetBlue to remain larger than Spirit and Frontier, combined. *Id.* at 67:4-69:21. JetBlue ultimately determined these more aggressive growth plans were infeasible because the airline had been "hemorrhaging" money for two years, and they would have all required significant capital expenditures. *Id.* at 68:23-69:21.

328. If the Proposed Acquisition is consummated, JetBlue's indebtedness will increase. Nov. 6, 2023, Tr. Vol. 1, 25:9:12 (Hayes/JetBlue); Nov. 17, 2023, Tr. Vol. 1, 17:4-11 (Hurley/JetBlue). JetBlue's current debt-to-cap ratio stands at 56 percent, and, if the Proposed Acquisition proceeds, JetBlue not only plans to raise about $3.5 billion in debt to fund the acquisition of Spirit, but will also take on Spirit's nearly $4 billion in debt. Nov. 17, 2023, Tr. Vol. 1, 16:12-14 (Hurley/JetBlue), discussing Tr. Ex. 649 at -606; Nov. 16, 2023, Tr. Vol. 2, 134:18-21 (Hurley/JetBlue); Nov. 17, 2023, Tr. Vol. 1, 17:12-14 (Hurley/JetBlue).

329. As such, should the Proposed Acquisition occur, JetBlue's post-acquisition debt-to-cap ratio will be between 83 percent and 111 percent. Nov. 17, 2023, Tr. Vol. 1, 17:18-18:1 (Hurley/JetBlue), discussing Tr. Ex. 649 at -606. JetBlue's increasing debt-to-cap will constrain growth, make borrowing difficult for the combined company, impact JetBlue's flexibility to respond to business and economic conditions, and reduce JetBlue's ability to invest in business development and make capital expenditures. Nov. 6, 2023, Tr. Vol. 1, 27:7-25 (Hayes/JetBlue).

330. For example, with respect to added liquidity, for 2023, JetBlue initially projected spending [redacted]. Hurley (JetBlue) Lit. Dep. 315:22-316:4, June 21, 2023. However, Ms. Hurley [redacted]

[redacted]. *Id.* at 316:5-10.

IV. PLAINTIFFS HAVE MET THIER BURDEN TO PROVE EACH OF THE RELEVANT MARKETS ALLEGED IN THE COMPLAINT

A. Plaintiffs And Defendants Agree That Scheduled Air Passenger Service Is a Relevant Product Market

331. The parties agree that "[s]cheduled air passenger service constitutes a relevant product market for purposes of analyzing" the Proposed Acquisition. ECF No. 191, Joint Proposed Pretrial Order ¶ 12 (Uncontested Facts).

B. Origin-and-Destination Pairs Are Relevant Geographic Markets

332. Origin-and-destination pairs are the relevant geographic markets for assessing the competitive effects of airline transactions. *United States v. Am. Airlines Grp. Inc.*, No. CV 21-11558-LTS, 2023 WL 3560430, at *36 (D. Mass. May 19, 2023) (noting JetBlue's concession that origin-and-destination pairs were relevant geographic markets). Likewise, Defendants concede in their pretrial brief that "airlines also compete at the route level." ECF No. 290, Defendants' Pretrial Brief at 26. This makes sense: a family planning a trip from their home in Boston to visit relatives in Miami would not be sufficiently likely to consider a trip to or from another city as a relevant substitute. Nov. 17, 2023, Tr. Vol. 1, 63:21-64:5 (Gowrisankaran/Pls. Expert).

333. Spirit and JetBlue likewise refer to origin-and-destination pairs as "routes" or "markets." Nov. 3, 2023, 2023, Tr. Vol. 2, 107:24-108:5 (Klein/Spirit); Nov. 2, 2023, Tr. Vol. 1, 39:3-7 (Clark/JetBlue); *supra* Part II.B. This is because the product airlines sell to customers is a seat on a plane flying from an origin to a destination. Oct. 31, 2023, Tr. Vol. 2, 107:7-12 (Christie/Spirit); Nov. 7, 2023, Tr. Vol. 2, 83:20-84:10 (Kirby/Spirit); *accord* Nov. 8, 2023, Tr. Vol. 2, 111:7-10 (Hillyard/JetBlue) (agreeing JetBlue uses "route" and "market"

interchangeably); Nov. 3, 2023, Tr. Vol. 2, 108:1-5 (Klein/Spirit) ("We're talking about city pairs, like the U.S. O&Ds earlier, that's what we're talking about when we define [']market[']").

334. Airlines set distinct prices for the seats on each route. *See, e.g.*, Nov. 8, 2023, Tr. Vol. 2, 122:7-10 (Hillyard/JetBlue). And, they monitor the fares for seats on each route that are offered by their rivals. *See, e.g.*, Nov. 15, 2023, Tr. Vol. 2, 119:16-120:18 (Jarashow/JetBlue); Nov. 15, 2023, Tr. Vol. 2, 148:11-21 (Lage/Spirit). As JetBlue's Head of Revenue and Planning, Mr. Clark, explained, when JetBlue sets fares for a particular route, it takes into consideration the specific competitive conditions on that route. Nov. 2, 2023, Tr. Vol. 1, 39:8-15 (Clark/JetBlue).

335. Dr. Gowrisankaran relied upon economic analyses and an examination of ordinary course documents and industry participants' testimony to conclude that the relevant geographic markets consist of origin-and-destination pairs. Nov. 17, 2023, Tr. Vol. 1, 64:6-17 (Gowrisankaran/Pls. Expert). In addition, academic studies of the airline industry focus on origin-and-destination pair markets. *Id.* at 68:4-18.

336. Notwithstanding the body of academic literature supporting origin-and-destination pairs as the relevant geographic markets for the airline industry, Plaintiffs' expert conducted three analyses to support the use thereof. First, he conducted a hypothetical monopolist analysis based on an examination of ordinary-course documents on margins in the airline industry and estimations of the elasticity of demand for origin-and-destination pairs found in the economics literature. Nov. 17, 2023, Tr. Vol. 1, 66:1-23 (Gowrisankaran/Pls. Expert). The results of the analysis illustrated that origin-and-destination pairs pass the hypothetical monopolist test. *Id.* at 66:1-23.

337. Second, as part of his competitive effects analysis, Dr. Gowrisankaran systematically examined a large number of entry events by JetBlue and Spirit and observed that

prices declined in origin-and-destination pair markets after entry. Nov. 17, 2023, Tr. Vol. 1, 66:24-67:4. (Gowrisankaran/Pls. Expert); *infra* Part V.D. Dr. Gowrisankaran explained that observing route-level price effects following from entry on origin-and-destination pairs illuminates the nature of competition in these markets and confirms that origin-and-destination pairs are relevant antitrust markets. *Id.* at 67:4-7.

338. Third, Dr. Gowrisankaran performed an entry analysis involving some nonstop flights between the five shortest origin-and-destination pairs reflecting entry by an LCC or a ULCC, allowing him to assess both substitution to other modes of travel and alternative endpoints for air travel. Nov. 17, 2023, Tr. Vol. 1, 67:8-21 (Gowrisankaran/Pls. Expert). This analysis confirmed that origin-and-destination pairs are relevant antitrust markets. *Id.* at 67:17-21.

C. Endpoints In An Origin-And-Destination Market Generally Comprise All Airports Serving A Metropolitan Area

339. The geographic markets include, for the most part, all the airports serving a metropolitan area as identified by the DOT. Nov. 17, 2023, Tr. Vol. 1, 62:14-63:6 (Gowrisankaran/Pls. Expert). For example, the Miami metropolitan market ("Miami") includes both the Miami International Airport ("MIA") and the Fort Lauderdale-Hollywood International Airport ("Fort Lauderdale" or "FLL"). Nov. 17, 2023, Tr. Vol. 1, 62:14-63:6 (Gowrisankaran/Pls. Expert).

340. The two exceptions are the Boston and New York City metropolitan areas. Nov. 17, 2023, Tr. Vol. 1, 63:7-20 (Gowrisankaran/Pls. Expert).

341. The Boston metropolitan endpoint consists of the Boston Logan International Airport. This definition is based on the population of Boston being centered around the city itself and Boston Logan's proximity to downtown. Nov. 17, 2023, Tr. Vol. 1, 63:11-20

(Gowrisankaran/Pls. Expert). The other Boston metropolitan-area airports, Manchester-Boston Regional Airport ("Manchester" or "MHT") in Manchester, New Hampshire, and the T.F. Green Airport ("Providence" or "PVD") in Providence, Rhode Island, are both located far from downtown Boston and serve such a small capacity that they are properly excluded from the Boston market. *Id.* at 63:11-20.[9]

342. The New York City metropolitan endpoint comprises John F. Kennedy International Airport ("JFK"), LaGuardia Airport ("LGA"), and Newark Liberty International Airport ("EWR"). *See* Tr. Ex. 839 at 1. Three smaller airports located farther from the city center are properly excluded from the New York City market based on similar factors identified for the Boston market. Nov. 17, 2023, Tr. Vol. 1, 63:7-20 (Gowrisankaran/Pls. Expert). Dr. Gowrisankaran conducted an analysis of the relative capacity of these three outlying small airports to assess whether consumer substitution to those airports could constrain a hypothetical monopolist of JFK/LGA/EWR and found that they could not. *Id.* at 67:22-68:2. Party testimony likewise support this conclusion. Nov. 1, 2023, Tr. Vol. 2, 135:8-11 (Clark/JetBlue); Hayes (JetBlue) CID Dep. 43:1-8, Jan. 24, 2023.

343. Consistent with the DOT's definition, Dr. Gowrisankaran defined the Orlando endpoint as consisting of the Orlando International Airport ("MCO") and did not include the Sanford International Airport ("SFB"). Nov. 20, 2023, Tr. Vol. 2, 101:2-11 (Gowrisankaran/Pls. Expert). Dr. Gowrisankaran investigated the robustness of his competitive effects analysis to the inclusion of SFB in the Orlando market and determined the impact is very small. *Id.* at 101:7-15 (Gowrisankaran/Pls. Expert).

[9] An analysis of the relative capacity of PVD, MHT, and Boston Logan confirmed that the capacity of PVD and MHT could not constrain a hypothetical monopolist controlling Boston Logan. Nov. 17, 2023, Tr. Vol. 1, 66:1-68:2 (Gowrisankaran/Pls. Expert).

D. Three Categories Of Relevant Markets For Analyzing The Competitive Effects Of The Proposed Acquisition

344. There are three categories of relevant origin-and-destination pair markets. The first category comprises overlap markets in which Spirit and JetBlue currently provide service. This category has three subcategories: (a) nonstop overlap (nonstop service by both Spirit and JetBlue); (b) mixed overlap (nonstop service by either Spirit or JetBlue, but not both, with the other providing connect service); and (c) connect overlap (both Spirit and JetBlue provide only connecting service). Nov. 17, 2023, Tr. Vol. 1, 69:8-21 (Gowrisankaran/Pls. Expert). These overlap markets are where Spirit and JetBlue currently compete head-to-head. *Id.* at 69:8-21.

345. The second category of relevant origin-and-destination pair markets are non-overlap markets, which were included because, after Spirit is eliminated, customers will no longer have the option of Spirit in those markets. Nov. 17, 2023, Tr. Vol. 1, 69:22-70:10 (Gowrisankaran/Pls. Expert).

346. The third category of relevant origin-and-destination pair markets are future Spirit nonstop markets (where Spirit plans to offer nonstop service in the future), because Spirit would be lost as a competitor in these markets. Nov. 17, 2023, Tr. Vol. 1, 70:1-14 (Gowrisankaran/Pls. Expert); Nov. 17, 2023, Tr. Vol. 2, 126:11-20 (Gowrisankaran/Pls. Expert).

E. Defendants' Expert Does Not Define Alternative Markets And Offers Only Immaterial Critiques

347. Dr. Hill does not offer an opinion that national scheduled air passenger service constitutes a relevant market, nor does he offer an opinion that airlines offer a national product for air travel. Nov. 27, 2023, Tr. Vol. 2, 163:23-164:5 (Hill/Defs. Expert). Dr. Hill acknowledged that the question of market definition is generally based on customer substitution. Nov. 27, 2023, Tr. Vol. 2, 164:17-22 (Hill/Defs. Expert). Dr. Hill relied on Dr. Gowrisankaran's definition of nonstop presumption overlap routes in his own presentation. *Id.* at 125:22-126:7 In fact, Dr. Hill

does not offer *any* alternative to Plaintiffs' market definition of scheduled air passenger service between origin-and-destination pairs. *Id.* at 126:8-10.

348. Instead of providing an alternative market definition, Dr. Hill offers only minor critiques to a few of the relevant markets identified by Dr. Gowrisankaran. Nov. 27, 2023, Tr. Vol. 2, 126:11-16. (Hill/Defs. Expert). Notably, Dr. Hill does not provide a specific critique of the DOT groupings nor of Dr. Gowrisankaran's conclusion that BOS and EWR/JFK/LGA should be treated as distinct endpoints.

V. THE PROPOSED ACQUISITION MAY SUBSTANTIALLY LESSEN COMPETITION AND RESULT IN HIGHER FARES FOR U.S. CONSUMERS

A. The Proposed Acquisition Is Presumptively Illegal In Many Relevant Markets

1. The proposed acquisition presumptively violates Section 7 in 183 markets

349. Defendants have high combined market shares in numerous markets. Nov. 17, 2023, Tr. Vol. 1, 72:7-73:3 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 803.

350. A merger or an acquisition that produces certain changes in concentration and ultimately results in concentration levels above a certain threshold is presumed likely to enhance market power. Nov. 17, 2023, Tr. Vol. 1, 73:45-74:14 (Gowrisankaran/Pls. Expert) (explaining that transactions resulting in a post-transaction HHI[10] – a standard measure of concentration – of greater than 2,500 and a change in HHI of 200, are presumptively anticompetitive under the Horizontal Merger Guidelines).

351. Relying on passenger-count-based market shares, JetBlue's proposed acquisition of Spirit is presumed likely to enhance market power in 183 markets in which both Spirit and JetBlue were providing service as of the time of analysis. Nov. 17, 2023, Tr. Vol. 1, 76:21-78:4 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 839 (containing a list of each nonstop, mixed,

[10] "HHI" stands for Herfindahl- Hirschman Index. Nov. 17, 2023, Tr. Vol. 1, 73:4-14 (Gowrisankaran/Pls. Expert).

and connect overlap in which the post-merger HHI would be greater than 1,500 with a change in HHI of at least 200); Tr. Ex. 833; *see also* Nov. 17, 2023, Tr. Vol. 1, 72:1-5, 87:9-21 (Gowrisankaran/Pls. Expert) (calculations based on data from the year before the announcement of the Proposed Acquisition—from the third quarter of 2021 through the second quarter of 2022—because data from this time period is the most recent data available that would not reflect any potential changes in incentives resulting from the Proposed Acquisition).

352. Specifically, looking at the three categories of overlap markets where JetBlue and Spirit competed at the time the Proposed Acquisition was announced, the Proposed Acquisition is presumptively anticompetitive in 187 overlap markets:

353. **Fifty-one nonstop overlap markets**: Markets where both Defendants provided nonstop service. Tr. Ex. 833.

354. **Fifteen mixed overlap markets**: Markets where one Defendant provided nonstop service, but the other provided only connect service. Tr. Ex. 833.

355. **One hundred seventeen connect overlap markets**: Markets where neither Defendant provided nonstop service, but both provided connect service. Tr. Ex. 839 at p. 1-3. *See also* Tr. Ex. 833.

356. In addition, there are 70 markets that, while not presumed to enhance market power, are either moderately or highly concentrated and where the Proposed Acquisition would increase concentration. Nov. 17, 2023, Tr. Vol. 1, 73:4-74:14 (Gowrisankaran/Pls. Expert); Tr. Ex. 839.

357. Using passenger-based shares is consistent with how consumers purchase airline tickets, as a consumer purchasing a single ticket on one airline would consider a single ticket on another airline as a substitute. Nov. 17, 2023, Tr. Vol. 2, 91:11-92:7 (Gowrisankaran/Pls.

Expert). In cases in which one unit of a low-priced product can substitute for one unit of a higher-priced product, unit sales may measure competitive significance better than revenues. *Id.* at 91:11-92:7. Indeed, in this case, revenue-based shares would understate the significance of a low-cost competitor like Spirit. Nov. 17, 2023, Tr. Vol. 2, 91:11-92:7 (Gowrisankaran/Pls. Expert); *accord* Nov. 2, 2023, Tr. Vol. 2, 99:13-101:7 (Clark/JetBlue) (responding to a question from the Court and agreeing that Spirit's unbundled product attracts a larger group of customers than revenue share indicates).

358. Even relying on revenue-based market shares, however, a similar number of relevant markets would meet the presumption. Nov. 17, 2023, Tr. Vol. 2, 92:10-93:3 (Gowrisankaran/Pls. Expert); Tr. Exs. 833, 840, 841 (using fare data to calculate revenue-based shares, a total of 138 markets, including 44 nonstop overlaps, met the presumption; and, using ticket data, which includes ancillary purchases, to calculate revenue-based shares, 150 markets, including 45 nonstop overlaps, met the presumption). *Id.*

2. Significant increases in concentration in the nonstop overlap presumption markets are a strong indication of reasonably probable harm to competition

359. The increased market shares and market concentration resulting from the Proposed Acquisition change the pricing incentives of the merging parties in a way that promotes higher prices and lower output. Nov. 17, 2023, Tr. Vol. 2, 93:5-94:18 (Gowrisankaran/Pls. Expert).

360. In the nonstop overlap markets, there would be an incentive, post-Proposed Acquisition, for the combined firm to raise prices on both airlines' products, because the merged entity will be able to recapture profits that would have previously been lost in a market with JetBlue and Spirit operating as independent firms. Nov. 17, 2023, Tr. Vol. 2, 93:5-94:18 (Gowrisankaran/Pls. Expert); *see also* Nov. 17, 2023, Tr. Vol. 2, 95:14-96:1 (Gowrisankaran/Pls.

Expert), discussing Gowrisankaran Direct Presentation at slide 33 (JetBlue would have an incentive to raise Spirit's prices by at least ten percent in 35 of the 51 nonstop overlap markets); Tr. Ex. 804.

361. The merged firm would have especially large incentives to increase the price of Spirit's products post-Proposed Acquisition because Spirit's prices are low. Nov. 17, 2023, Tr. Vol. 2, 96:2-10 (Gowrisankaran/Pls. Expert). JetBlue's plan to eliminate the Spirit brand post-Proposed Acquisition is equivalent to raising prices so high that no one will choose Spirit. *Id.* at 96:10-15 (Gowrisankaran/Pls. Expert); *see also infra* Part VI.A.1.

3. Despite recent service changes, JetBlue and Spirit have consistently competed head-to-head on the bulk of nonstop overlap routes

362. Of the 51 nonstop overlap presumption markets, 35 of those markets have exceeded the presumption threshold for each of the last three years. Nov. 27, 2023, Tr. Vol. 2, 158:10-25 (Hill/Defs. Expert); Tr. Ex. 882 (depicting 35 markets as having HHIs exceeding the presumption each of the last three years). These 35 markets account for more than 30 million passengers per year and include large markets such as Miami-New York City and Boston-Miami. Tr. Ex. 882 (adding up the total passengers in the "Market Size" columns). More than 80 percent of the total passengers in the 51 nonstop overlap presumption markets are in these 35 markets. Tr. Ex. 882 (comparing total passengers found in "Market Size" columns).

363. Both Spirit and JetBlue have generally served the presumptive nonstop overlaps out of the Boston, Miami, and New York City metropolitan areas continuously following their entry, with minimal service disruptions. This means that Spirit's and JetBlue's presence on these routes is generally not transitory. Nov. 21, 2023, Tr. Vol. 1, 63:15-66:13 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slides 40-43.

364. There are 25 nonstop overlap routes involving Miami that meet the presumption.

Approximately 20 million passengers fly on these routes each year. Tr. Ex. 839. Spirit served each of these routes for between 15 and 21 years on an uninterrupted basis. JetBlue had a similar service pattern out of Miami. Nov. 21, 2023, Tr. Vol. 1, 65:2-20 (Chipty/Pls. Expert), discussing Tr. Ex. 876.

365. There are seven nonstop overlap routes touching Boston that meet the presumption. Approximately 5 million passengers fly on these routes each year. Tr. Ex. 839. As of 2022, JetBlue had served each of these routes for between 15 and 19 years. Spirit began serving the routes later, with between four and 15 years of uninterrupted service, with one exception. Nov. 21, 2023, Tr. Vol. 1, 63:15-65:1 (Chipty/Pls. Expert), discussing Tr. Ex. 877.

366. There are six nonstop overlap routes out of the New York City metropolitan area that meet the presumption. Approximately 16 million passengers fly on these routes each year. Tr. Ex. 839. JetBlue had served each of these routes for at least 21 years, as of 2022. Spirit has been serving them for between 4 and 21 years, relatively uninterrupted. Nov. 21, 2023, Tr. Vol. 1, 65:21-66:3 (Chipty/Pls. Expert), discussing Tr. Ex. 878.

367. Using data from the third quarter of 2022 to the second quarter of 2023, the total number of overlap routes meeting the presumption threshold remains largely unchanged; nine markets drop out and seven additional nonstop overlap routes now meet the presumption. Nov. 17, 2023, Tr. Vol. 2, 88:17-89:22 (Gowrisankaran/Pls. Expert); Tr. Ex. 837. When considering recent exits by either Spirit or JetBlue in the nonstop overlap presumption markets, "[m]ost of the markets are unaffected" and "the biggest markets are largely unaffected by these decisions." Nov. 17, 2023, Tr. Vol. 2, 88:6-15 (Gowrisankaran/Pls. Expert).

368. Airline scheduling data from the second quarter of 2023 (July) through the end of the second quarter of 2024 (June) indicate that JetBlue or Spirit has already exited, or will

shortly exit, 12 nonstop overlaps. Nov. 17, 2023, Tr. Vol. 2, 89:25-90:23 (Gowrisankaran/Pls. Expert); Tr. Ex. 838. During the same period, JetBlue or Spirit have entered, or will soon enter, nine new routes, creating new nonstop overlaps. Nov. 17, 2023, Tr. Vol. 2, 89:25-90:23 (Gowrisankaran/Pls. Expert); Tr. Ex. 838. Market shares for these new nonstop overlap routes are not yet available. Nov. 17, 2023, Tr. Vol. 2, 89:25-90:23 (Gowrisankaran/Pls. Expert).

4. Given their extensive overlap in many markets, JetBlue's and Spirit's networks are not complementary

369. JetBlue's and Spirit's networks overlap significantly. As measured by metro area, JetBlue and Spirit have 99 nonstop overlaps, Nov. 2, 2023, Tr. Vol. 2, 167:19-169:10 (Clark/JetBlue), and between 30 and 40 percent of JetBlue's and Spirit's nonstop routes are overlapping, Nov. 21, 2023, Tr. Vol. 1, 49:10-50:5 (Chipty/Pls. Expert). Additionally, they each have "focus" or "core" cities in Fort Lauderdale and Orlando, *see supra* Part I.A-B; Tr. Ex. 839 (including Fort Lauderdale and Miami airports as the Miami endpoint); *supra* Part IV.C.

5. The presumption for mixed and connect overlap relevant markets is not rebutted by Spirit's use of sum-of-locals pricing

370. Dr. Hill discounted the prospect of harm in the 117 overlap routes where Spirit and JetBlue both offer connecting service and the Proposed Acquisition is presumptively anticompetitive because Spirit's fares in those markets are determined by sum-of-local pricing. Nov. 27, 2023, Vol. 1, 71:21-72:2 (Hill/Defs. Expert), discussing Hill Direct Presentation at slide 41. Dr. Hill also discounted any likely harm in the five presumptively anticompetitive "mixed" overlap markets in which JetBlue has nonstop service and in which Spirit only has connecting service, also based on Spirit's sum-of-local pricing. Nov. 27, 2023, Tr. Vol. 1, 73:19-75:5 (Hill/Defs. Expert), discussing Hill Direct Presentation at slide 44. "Sum-of-local" fares are constructed by adding together the fares for the two local segments that make up the connection. Tr. Ex. 325 at -683; *see also* Lage (Spirit) Lit Dep. 214:16-24, 215:10-16, 227:23-228:6, July 7,

2023.

371. Contrary to Dr. Hill's suggestion, because Spirit's local fares are so low, its sum-of-local connect pricing significantly undercuts the pricing offered by other airlines to customers. Ex. 325 at -683 (explaining that 97 percent of Spirit's connecting fares are "sum of local" fares and that "most [Spirit] connect markets are 'underpriced' vs the industry"). The extent of Spirit's undercut is illustrated by an example from the New York City metropolitan area to Guayaquil, Ecuador ("GYE") where, early in 2022, Spirit's one-way, sum-of-local fare was $53 in contrast to JetBlue's $161 fare. *Id.* at -684; *see also* Lage (Spirit) Lit Dep. 228:21-229:21, 231:14-24, July 7, 2023.

B. Eliminating Spirit Would Substantially Lessen Competition And Harm Consumers

372. As Spirit has grown over the years, it has posed an increasing competitive threat to JetBlue and the Big Four airlines, to the benefit of Spirit passengers and other traveling consumers alike. *Infra* Part V.B.1. Consumers have benefitted from Spirit's low prices, including the via pressure they have placed on JetBlue's and other airlines' prices. *Infra* Part V.B.2. JetBlue's plan to erase the Spirit business model would have an outsized impact on cost-conscious travelers. *Infra* Part V.B.3. And, if the Proposed Acquisition proceeds, these consumer benefits would not only disappear from Spirit's existing routes, but also not reach consumers in markets in which Spirit planned to enter in the foreseeable future. *Infra* Part V.B.4.

1. Consumers benefit from significant head-to-head competition between Spirit and JetBlue

a. JetBlue and Spirit have become increasingly close competitors in the past decade

373. The number of overlap routes between JetBlue and Spirit has grown significantly since 2010, and competition between the two airlines has increased during that timeframe. Nov. 1, 2023, Tr. Vol. 2, 133:1-12, 147:18-148:1 (Clark/JetBlue). For example, a January 2020

internal JetBlue presentation indicated that the number of routes where JetBlue and Spirit compete head-to-head grew from fewer than 20 in 2010 to more than 80 by 2019. Nov. 1, 2023, Tr. Vol. 2, 147:18-25 (Clark/JetBlue), discussing Tr. Ex. 648 at -713. By October 2020, Spirit had nearly doubled its capacity in JetBlue markets over the three prior years "and [was] growing faster in [JetBlue's] markets than [other airlines]." Tr. Ex. 380 at -621.

374. Many of Spirit's and JetBlue's overlap routes are to/from Los Angeles, New York City, San Juan, and Boston, given Spirit's recent growth in these cities. *See* Nov. 7, 2023, Tr. Vol. 2, 129:13-130:5 (Kirby/Spirit) (discussing growth in Los Angeles and New York City). JetBlue and Spirit's overlaps have also increased significantly on routes touching Florida and Latin America. Nov. 1, 2023, Tr. Vol. 2, 138:9-13 (Clark/JetBlue); *see also* Hayes (JetBlue) CID Dep. 95:20-96:5, Jan. 24, 2023 (noting routes to/from Fort Lauderdale are where JetBlue and Spirit overlap the most); Nov. 15, 2023, Tr. Vol. 2, 132:11-14 (Jarashow/JetBlue) (JetBlue was "impacted by Spirit in routes between Florida and Latin America by 2019"); Tr. Ex. 792 at -447 (depicting Spirit's entry and growth in JetBlue's Florida/Latin markets in the years leading up to 2019); Tr. Ex. 429 at -719 (JetBlue Board presentation from December 2019 showing that "JetBlue is highly exposed to the Latin region as it constitutes 31 percent of JetBlue ASMs" and that Spirit is the next-largest carrier in the region).

375. By October 2019, Spirit's growing competitive threat to JetBlue in markets between New York City and the Caribbean was also "raising a red flag" within the JetBlue Pricing Team. Nov. 1, 2023, Tr. Vol. 2, 134:15-135:16 (Clark/JetBlue), discussing Tr. Ex. 644 at -460-62. JetBlue was facing "extreme fare pressure . . . in some of our key markets from ULCCs," as ULCCs "ha[d] been growing heavily in our markets (~30% growth last three quarters)," according to an email Mr. Clark forwarded to Mr. Hayes. Tr. Ex. 644 at -460.

376. The aggressive response of legacy airlines to Spirit's low fares compounded the pressure that Spirit put on JetBlue. For example, in 2019, low ULCC fares led United Airlines to take "aggressive" action in lowering its fares to protect its markets, such as by filing "extraordinarily low" $29 walkup fares from Newark to Santo Domingo. Tr. Ex. 644 at -461; Nov. 1, 2023, Tr. Vol. 2, 135:22-136:1 (Clark/JetBlue). Delta, in turn, matched those $29 fares from JFK airport and JetBlue, which served the market from JFK, matched in turn and was "unsuccessful[]" in raising those low fares. Tr. Ex. 644 at -461; Nov. 1, 2023, Tr. Vol. 2, 136:10-20 (Clark/JetBlue). As a result, JetBlue's walkup fares, meaning fares with no advance purchase restriction, were more than $100 lower than before Spirit entered the market. Nov. 1, 2023, Tr. Vol. 2, 137:5-7 (Clark/JetBlue).

377. During this same period, JetBlue was concerned that Spirit was getting better at targeting VFR customers in price-sensitive markets and that United and Delta were aggressively matching Spirit's low fares, making it more difficult for JetBlue to command a premium price. Nov. 1, 2023, Tr. Vol. 2, 141:14-142:8 (Clark/JetBlue), discussing Tr. Ex. 646 at -370.

378. Spirit's growing competitiveness with JetBlue, especially with respect to the margins Spirit was able to achieve in Fort Lauderdale, caused JetBlue's CEO to worry that "Spirit control[ed] the ball" in South Florida. Nov. 3, 2023, Tr. Vol. 2, 150:25-151:13 (Hayes/JetBlue), discussing Tr. Ex. 673 at -686. Within months, JetBlue's Network Planning Team recognized the competitive pressure from Spirit and recommended JetBlue take an "offensive posture" in Fort Lauderdale to counter Spirit's rapid growth there. Tr. Ex. 405 at -210.

379. Dave Clark, JetBlue's Head of Revenue and Planning, was concerned about Spirit's competitiveness relative to JetBlue, observing in October 2019 that Spirit's "key weapon is its very low cost and the very low fares they enable," and therefore "customers most interested

in the absolute lowest fare may find Spirit's offer compelling." Nov. 1, 2023, Tr. Vol. 2, 132:7-25 (Clark/JetBlue); Nov. 2, 2023, Tr. Vol. 1, 35:24-36:11 (Clark/JetBlue), discussing Tr. Ex. 653 at -420.

380. This closeness of competition between JetBlue and Spirit leads to lower prices for consumers in relevant markets. In fact, JetBlue has found that, when Spirit enters a market in which JetBlue operates, JetBlue's fares and revenue decrease by more than ten percent. Nov. 2, 2023, Tr. Vol. 1, 31:6-10 (Clark/JetBlue). For example, JetBlue's fares not only decreased eight percent, on average, after Spirit entered the Boston-Orlando market but stayed down. JetBlue's fares fell by 12 percent when Spirit entered the Boston-Las Vegas route. Nov. 1, 2023, Tr. Vol. 2, 152:16-153:9 (Clark/JetBlue), discussing Tr. Ex. 652 at -861; *see also supra* Part II.A.5 (discussing examples of price competition between JetBlue and ULCCs, including Spirit); *supra* Parts II.D.6-7 (discussing examples of price competition between JetBlue and Spirit).

381. Spirit's low prices constrained JetBlue's pricing strategies. For example, although JetBlue's Pricing Team was considering an increase in various markets between Florida and Puerto Rico, JetBlue recognized it could not "get too far from Spirit" in some of these markets, bearing in mind the lower fares Spirit was offering. Nov. 8, 2023, Tr. Vol. 2, 123:23-125:21 (Hillyard/JetBlue), discussing Tr. Ex. 371 at -276. And competition from Spirit lowered JetBlue's prices post-Spirit entry even in markets in which JetBlue's express strategy was to "ignore NK [Spirit]." Nov. 1, 2023, Tr. Vol. 2, 154:19-157:18 (Clark/JetBlue), discussing Tr. Ex. 648 at -717.

382. Spirit's analysis from 2022 confirmed JetBlue's observations about Spirit's effect on JetBlue fares. For example, JetBlue offered exclusive service in the Boston-San Juan market prior to Spirit's entry in 2019, Nov. 7, 2023, Tr. Vol. 2, 97:10-13 (Kirby/Spirit), and Spirit found

that, after entering the route, JetBlue's average fares on that route dropped by nearly 10 percent, Nov. 7, 2023, Tr. Vol. 2, 99:6-15 (Kirby/Spirit); Tr. Ex. 349 at -902.

383. During the competing bid process, discussed *supra* Part III.B-C, as little as two months before the Acquisition Agreement, Spirit publicly touted that it continued to be a check on JetBlue's fares. Tr. Ex. 349 at -902; *see also* Oct. 31, 2023, Vol. 2, 134:1-13 (Christie/Spirit).

b. JetBlue employed specific strategies and actions to better compete against Spirit

384. JetBlue launched "Blue Basic" fares in response to competitive pressure from Spirit and other airlines which were offering lower, unbundled fares to compete with Spirit. As discussed *supra* Parts I.B & II.D.1, in light of growing direct and indirect competitive pressure from Spirit, JetBlue launched its unbundled fare product, Blue Basic, in 2019. Leading up to JetBlue's rollout of Blue Basic, JetBlue's Head of Revenue and Planning said that the "the airline industry appear[ed] to be evolving from its traditional All-Inclusive model (in which many couldn't afford to fly and those who did had to pay for things they didn't value) to a Customer Choice model where customers have a lot more ability select the attributes they value such as they would in a hotel or restaurant." Nov. 2, 2023, Tr. Vol. 1, 23:18-27:9 (Clark/JetBlue), discussing Tr. Ex. 651 at -958.

385. This enhanced consumer choice model was and is good for consumers overall "as it lowers the price of entry for air travel and allows travelers to customize their experiences to their personal preferences." Tr. Ex. 651 at -958; *see also* Nov. 2, 2023, Tr. Vol. 1, 25:17-23 (Clark/JetBlue).

386. Blue Basic was designed to compete against the unbundled fare product Spirit offered and to better capture price-sensitive customers. Nov. 1, 2023, Tr. Vol. 2, 160:6-10; Nov. 2, 2023, Tr. Vol. 1, 12:4-7 (Clark/JetBlue); *supra* Part II.D.1. Prior to the introduction of basic

economy products by other airlines, JetBlue had been able to command a price premium over Spirit. Nov. 2, 2023, Tr. Vol. 1, 15:22-16:7 (Clark/JetBlue), discussing Tr. Ex. 650 at -662. However, once other airlines started offering basic economy fares, which enabled them to compete aggressively against ULCCs, JetBlue was forced to lower fares to price closer to Spirit and other airlines' basic economy offerings. Nov. 2, 2023, Tr. Vol. 1, 14:18-23, 16:13-17:8 (Clark/JetBlue), discussing Tr. Ex. 650.

387. When Blue Basic was first introduced in 2019, it included in the fare a carry-on bag as well as a personal item customers could bring onboard. Nov. 2, 2023, Tr. Vol. 1, 27:12-24 (Clark/JetBlue). JetBlue subsequently further unbundled its Blue Basic offering—by removing the included carry-on bag—to better compete with Spirit's fully unbundled offering. Nov. 2, 2023, Tr. Vol. 1, 31:11-32:2 (Clark/JetBlue).

388. **In 2019, JetBlue initiated the "Spirit Competitive Strategy" and "ULCC Test":** In reaction to Spirit's increasing competitive threat, by 2018 JetBlue's Pricing Team was asked to track Spirit's fare changes in the same way it tracked legacy fare changes to improve JetBlue's understanding of its competitive posture. Hillyard (JetBlue) Lit Dep. 96:5–97:7, 97:20-98:8, 98:19-25, June 27, 2023.

389. In late 2019, JetBlue began developing an integrated strategy specifically to compete more effectively with Spirit, which it called the "Spirit Competitive Strategy." Nov. 1, 2023, Tr. Vol. 2, 142:15-143:22 (Clark/JetBlue), discussing Tr. Ex. 647. This was one of only two such initiatives in the past 14 years aimed at a single, specific JetBlue competitor that JetBlue's head of Revenue and Planning could recall. Nov. 1, 2023, Tr. Vol. 2, 143:18-145:4 (Clark/JetBlue), discussing Tr. Ex. 647.

390. As part of this initiative, JetBlue looked at the effect of Spirit's entry in a route on

JetBlue's route-level performance and found JetBlue's margins decreased in the vast majority of Spirit-entered routes. Nov. 1, 2023, Tr. Vol. 2, 150:23-152:3 (Clark/JetBlue).

391. JetBlue's analysis also found that "Spirit outperform[ed] across most regions where both" JetBlue and Spirit provided service. Tr. Ex. 414 at -387, -388.

392. Although the Spirit Competitive Strategy was broadened to include other ULCCs-—becoming the "ULCC Test"—Spirit was an important focus as JetBlue's internal analysis showed that Spirit was JetBlue's "main ULCC competitor." Nov. 1, 2023, Tr. Vol. 2, 146:17-22 (Clark/JetBlue), discussing Tr. Ex. 648 at -713. Spirit was also competing more intensely relative to Frontier by: (1) offering more daily flights on its routes and (2) exiting fewer routes. Nov. 1, 2023, Tr. Vol. 2, 149:8-19 (Clark/JetBlue), discussing Tr. Ex. 648 at -714; *see also infra* Parts VII.A.6-7.

393. The purpose of the ULCC Test was to identify an optimal fare-matching strategy versus ULCCs. Nov. 2, 2023, Tr. Vol. 2, 143:23-144:1 (Clark/JetBlue). As part of the ULCC Test, JetBlue analyzed how competition with each ULCC affected JetBlue's performance and also evaluated its overall performance relative to each ULCC competitor on overlap routes. *See, e.g.*, Tr. Ex. 652 at -888.

394. Notably, JetBlue only matched Spirit's fares during the ULCC Test when Spirit was actively flying in the same market. Weiner (JetBlue) CID Dep. 245:21-247:1, Jan. 31, 2023, discussing Tr. Ex. 390 at -788. For example, if Spirit seasonally exited a route, JetBlue would stop offering the same low of fares. *Id.* Similarly, JetBlue raised fares in test markets when JetBlue was not facing nonstop competition in those markets to generate more revenue. Weiner (JetBlue) Lit. Dep. 170:23-172:19, 172:21-173:16, 175:19-176:1, June 8, 2023, discussing Tr. Ex. 394.

395. When JetBlue matched Spirit's fares in particular markets during the ULCC Test, both Spirit and other airlines responded with their own fare reductions. Legacy airlines generally matched JetBlue's Spirit-matching fares in overlap markets (sometimes with a premium), as JetBlue had anticipated those airlines would do. Nov. 15, 2023, Tr. Vol. 2, 125:4-9, 133:20-134:13 (Jarashow/JetBlue), discussing Tr. Ex. 791 at -148, Tr. Ex. 395 at -633; *see also* Tr. Ex. 791 at -143 ("Our expectation is that OA [other airlines] will match these fares within each market where they are filed.").

396. Spirit, for its part, responded to JetBlue's matching fares by "dropping its fares even lower." Tr. Ex. 395 at -633; Nov. 15, 2023, Tr. Vol. 2, 134:14-21 (Jarashow/JetBlue). For example, a JetBlue analyst observed that, after JetBlue matched Spirit's fare in two markets as part of the initial ULCC test, "NK [Spirit] further lowered their lowest fare in both markets," and that was "something [he'd] witnessed in all [his] markets where Spirit is present." Tr. Ex. 792 at -440-41; Nov. 15, 2023, Tr. Vol. 2, 130:15-131:20 (Jarashow/JetBlue).

397. Evaluating the results of the ULCC test, JetBlue found it had positive booking trends in markets in which it was closely aligned in price to ULCCs, including Spirit. Tr. Ex. 652 at -862; Nov. 2, 2023, Tr. Vol. 1, 32:21-35:3 (Clark/JetBlue); *see also* Weiner (JetBlue) CID Dep. 272:15-273:7, Jan. 31, 2023, discussing Tr. Ex. 391 at -037. The ULCC Test also confirmed that JetBlue faced challenges when attempting to price significantly above ULCCs. Tr. Ex. 652 at -862; *see also* Nov. 2, 2023, Tr. Vol. 1, 32:12-20 (Clark/JetBlue).

398. At trial, Mr. Jarashow suggested that JetBlue stopped responding directly to Spirit pricing at the end of the ULCC Test period in the summer of 2020. Nov. 15, 2023, Tr. Vol. 2, 139:23-141:2 (Jarashow/JetBlue). However, in response to questioning from the Court, Mr. Jarashow subsequently acknowledged that after the ULCC Test, JetBlue continued some form of

benchmarking Spirit's prices. Nov. 15, 2023, Tr. Vol. 2, 145:5-146:12 (Jarashow/JetBlue).

c. Additional evidence demonstrates significant competition between JetBlue and Spirit

399. Today, JetBlue matches Spirit's fares in some markets on a market-by-market basis, sometimes with a dollar-for-dollar fare match to Spirit and sometimes with a slight premium. Nov. 8, 2023, Tr. Vol. 2, 122:11-23 (Hillyard/JetBlue); Weiner (JetBlue) CID Dep. 258:13-259:1, Jan. 31, 2023.

400. Even where JetBlue does not continuously match Spirit's fares, competitive pressure from Spirit leads JetBlue to reduce its fares periodically. Nov. 15, 2023, Tr. Vol. 2, 146:20-23 (Jarashow/JetBlue) (explaining JetBlue files "lower tactical fares that are approaching Spirit's fares").

401. In one instance, in March 2023, JetBlue's Pricing Team undertook a review comparing fares on routes between New York City and Florida with the fares of ULCCs in those markets; as a result of that review, JetBlue adjusted its strategy to have pricing closer to its ULCC competitors in the distinct markets. Nov. 8, 2023, Tr. Vol. 2, 113:16-25, 122:11-23 (Hillyard/JetBlue). For some of these routes, Spirit was the only ULCC competitor at the time of the review. Nov. 8, 2023, Tr. Vol. 2, 115:25-116:4 (Hillyard/JetBlue), discussing Tr. Ex. 690. After JetBlue implemented its new pricing strategy for the New York-Fort Lauderdale market, for example, its prices for walk-up fares dropped from 115 percent more expensive than Spirit's walk-up fares to 41 percent more expensive. Nov. 8, 2023, Tr. Vol. 2, 118:24-119:4 (Hillyard/JetBlue), discussing Tr. Ex. 691. Similarly, JetBlue's prices for seven-day advance purchase fares dropped from 208 percent more expensive than Spirit's seven-day advance purchase fares to 25 percent more expensive. Nov. 8, 2023, Tr. Vol. 2, 120:12-121:10 (Hillyard/JetBlue).

402. The record contains numerous other examples of JetBlue responding to competitive pressure from Spirit in the ordinary course over a period of years, including very recent instances, for example:

403. In May 2019, JetBlue developed a "Strategy Outline For Spirit-Impacted Florida Latin Markets." Tr. Ex. 792 at -445; *see* Nov. 15, 2023, Tr. Vol. 2, 132:2-17 (Jarashow/JetBlue). That "resistance plan was fully implemented" in at least one market, Orlando to Montego Bay, Jamaica. Tr. Ex. 792 at -440.

404. In February 2020, when Spirit and JetBlue were the only nonstop competitors on the Richmond, Virginia-Fort Lauderdale route, JetBlue's pricing strategy on that route was to "keep eye on NK [Spirit]." Tr. Ex. 382 at -443. JetBlue filed low fares in that nonstop overlap route, with a strategy of taking "premium" fares that were "slightly higher fare[s] than what Spirit had." Hillyard (JetBlue) Lit. Dep. 147:15-148:10, June 27, 2023. Despite that attempt to maintain a slight premium over Spirit, JetBlue also filed tactical fares that were "much closer to, or matching Spirit." Tr. Ex. 382 at -443; *see* Hillyard (JetBlue) Lit Dep. 149:20-150:12, June 27, 2023.

405. In May 2020, Spirit observed that JetBlue rescinded a fare increase in a number of markets in which JetBlue competed with both Spirit and Southwest. Tr. Ex. 855 at -043 to -044. Spirit concluded that "[Southwest] doesn't want to get further away from our [Spirit's] fares," demonstrating that Spirit's presence in those JetBlue/Southwest markets indirectly constrained JetBlue's ability to raise prices. Tr. Ex. 855 at -043-44; *see also* Lage (Spirit) Lit. Dep. 137:14-138:14, June 1, 2023.

406. For the late 2022 holiday period, JetBlue's revenue management team observed that "B6 [JetBlue] versus OA [other airline] fare gaps ha[d] been widening" and that the

widening gap was "driven by NK [Spirit]," noting low fares that Spirit offered in Fort Lauderdale to Los Angeles, Fort Lauderdale to Las Vegas, Boston to Fort Myers, San Juan to Newark, and Fort Lauderdale to San Juan. Tr. Ex. 354 at -997 to -002. JetBlue's analysis showed that JetBlue's selling fare remained close to constant while Spirit's selling fare decreased. Hillyard (JetBlue) Lit. Dep. 158:13-23, June 27, 2023.

407. In March 2023, JetBlue observed that it was "very weakly performing" on the Fort Lauderdale to [redacted] route. Tr. Ex. 353 at -764. On that route, Spirit was undercutting JetBlue with a $71 fare for a 7-day advance purchase compared to JetBlue's $119 fare. Hillyard (JetBlue) Lit Dep. 178:14-179:12, June 27, 2023, discussing Tr. Ex. 353 at -765. In response, a JetBlue revenue management analyst proposed a tactical fare of $54 for seven-day advance purchase fares. Tr. Ex. 353 at -764; *see also* Hillyard (JetBlue) Lit. Dep. 176:1-5, June 27, 2023.

d. Empirical evidence confirms consumers benefit when JetBlue and Spirit compete in relevant markets

408. Empirical analysis of Spirit entry events in markets served by JetBlue shows substantial competition between Defendants. Nov. 17, 2023, Tr. Vol. 2, 98:22-99:14, 103:11-24 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slides 38-40; Tr. Ex. 805.

409. For the 16 Spirit entry events, the data show a general pattern of JetBlue responding to Spirit entry by lowering its prices. Nov. 17, 2023, Tr. Vol. 2, 103:11-24 at 103:18-20 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 805. Controlling for other factors that may influence price, JetBlue lowers prices by 10.5-15.5 percent in response to Spirit's entry. Nov. 17, 2023, Tr. Vol. 2, 104:6-105:16 (Gowrisankaran/Pls. Expert); Tr. Ex. 805. This is consistent with JetBlue's ordinary course analyses, which found similar price impacts in markets pre- and post-Spirit entry. Nov. 17, 2023, Tr. Vol. 2, 103:25-104:4 (Gowrisankaran/Pls. Expert), discussing

Gowrisankaran Direct Presentation at slide 40; *see also* Tr. Ex. 648 at -717.

2. Spirit's presence lowers other airlines' fares

410. Spirit's presence in a market prompts a widespread response by competitors, as discussed *supra* Part II.D.7. The record contains numerous examples of Spirit undercutting and putting other pressure on JetBlue's fares, directly and indirectly, as well as on legacy airlines' fares. For example:

411. In January 2021, JetBlue increased its fares in New York City to Florida markets. Spirit observed that JetBlue's increase initiative, like a prior one during the same month, would encounter "push back from [American/United/Delta]" because those legacy airlines were "reluctant to increase their own ULCC structures." Tr. Ex. 449 at -670; *see* Nov. 16, 2023, Tr. Vol. 1, 26:22-27:25 (Lage/Spirit). Discussing fare activity in the same month, Spirit pricing analyst Raphael Weiner commented that legacy and Big Four airlines, including Southwest, "may see [Spirit] as the lowest common denominator," suggesting that other airlines did not cancel low fares due to Spirit. Tr. Ex. 796 at -545; *see* Nov. 16, 2023, Tr. Vol. 1, 25:18-26:13 (Lage/Spirit).

412. In another example of indirect pressure on JetBlue to keep fares low, in February 2021, Spirit observed JetBlue filing "low substructure fares" to address legacy airline "ULCC structure[]" fares that were undercutting JetBlue's initiative to increase its core fares. Tr. Ex. 450 at -256; *see* Lage (Spirit) Lit. Dep. 189:20-190:24, 191:12-20, June 1, 2023.

413. In October 2021, a Senior Pricing Manager at Spirit, Leonardo Lage, commented that JetBlue was filing fares in some overlap markets that were "so low . . . due to competitive pressure from [Spirit]." Tr. Ex. 671 at -435; *see* Nov. 3, 2023, Tr. Vol. 1, 62:21-63:20 (Klein/Spirit).

414. When Spirit enters a market, its rivals reduce their prices by between 7 and 11

percent, on average. Nov. 17, 2023, Tr. Vol. 2, 105:18-106:5 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 43 and Tr. Ex. 806; *see also* Nov. 17, 2023, Tr. Vol. 2, 106:6-107:5 (Gowrisankaran/Pls. Expert) (explaining analysis understates Spirit's impact on competition, because it does not account for Spirit's own low prices or other airlines' changing passenger mix); *infra* Part V.D.1 (explaining use of regressions). Additional harm would result in markets in which Spirit will, in the future, compete as a stand-alone competitor.

3. Eliminating Spirit would harm cost-conscious travelers, in particular

415. As discussed above, particularly *supra* Parts I.A & II.D.3-4, cost-conscious travelers are the core of Spirit's target market, and many such travelers would not be able to fly with higher-priced fares. JetBlue plans to convert Spirit's planes to the JetBlue layout, and charge JetBlue's higher average fares to its customers. *See infra* Part VI.A-B. The elimination of Spirit would harm cost-conscious travelers who rely on Spirit's low fares and the Spirit Effect's reduction of fares in markets Spirit serves (or would serve in the near-term). Nov. 17, 2023, Tr. Vol. 1, 46:4-47:13 (Gowrisankaran/Pls. Expert).

416. Spirit's presence on a route particularly benefits cost-conscious customers. *See supra* Parts II.D.3-4 & 7. In the Hartford-Miami market, for example, Spirit's entry led to more low-fare tickets being sold. Nov. 17, 2023, Tr. Vol. 2, 107:14–109:11 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slides 45-47; Tr. Ex. 813. In this market, prior to Spirit's entry, only 10 percent of passengers were buying tickets priced at or below $102.50; after Spirit's entry, 31 percent of passengers were buying tickets priced at or below $102.50. Nov. 17, 2023, Tr. Vol. 2, 108:25-109:11 (Gowrisankaran/Pls. Expert). In other words, Spirit does more than just lower average prices; Spirit lowers prices for the cost-conscious travelers who purchase the lowest fares. *Id*.

417. JetBlue, on the other hand, does not benefit cost-conscious travelers to the same degree. Nov. 17, 2023, Tr. Vol. 2, 109:13-110:7 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 48; Tr. Ex. 814. A systematic analysis of all market fares shows that Spirit causes a bigger reduction (33.5 percent) than JetBlue does (18.5 percent) on prices for the least-expensive tickets. Tr. Ex. 814. Relative to JetBlue, Spirit is more able to lower prices for cost-conscious travelers. Nov. 17, 2023, Tr. Vol. 2, 109:13-110:7 at 110:5-7 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 48.

418. And Spirit has, since 2017, offered prices consistently lower than JetBlue and the legacy airlines. JetBlue has offered fares similar to the legacies before, during, and after the COVID-19 pandemic. Nov. 17, 2023, Tr. Vol. 2, 110:9-111:6 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 49; Tr. Ex. 815. Spirit, on the other hand, has offered cost-conscious travelers a consistent low-fare option relative to JetBlue and the legacy airlines during the same period. Nov. 17, 2023, Tr. Vol. 2, 110:9-111:6 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 49; Tr. Ex. 815.

419. Moreover, Plaintiffs' and Defendants' experts both agree the per-plane impact of Spirit entry on market-wide average fares generally exceeds that of JetBlue. As such, the replacement of Spirit by JetBlue in a market will result in higher fares in the market. Nov. 17, 2023, Tr. Vol. 2, 137:22-139:15 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 70; Tr. Ex. 808; Nov. 27, 2023, Tr. Vol. 2, 103:16-104:17 (Hill/Defs. Expert), discussing Tr. Ex. 881.

4. Additional harm would result in markets in which Spirit will compete as a standalone competitor in the near future

420. The competitive effects described above would likewise be felt in markets Spirit

plans to enter in the near-term future. Nov. 17, 2023, Tr. Vol. 2, 126:11-126:20 (Gowrisankaran/Pls. Expert); Nov. 7, 2023, Tr. Vol. 2, 107:17-108:12 (Kirby/Spirit) (Spirit's growth plans are realistic). In markets in which JetBlue currently offers service on a nonstop basis, Spirit's entry would create a new nonstop overlap between Defendants. As such, the Proposed Acquisition would: (1) reduce the incentive of the combined firm to deploy capacity in markets already served by JetBlue, (2) reduce the number of competitors in such markets by one and thus result in higher prices, and (3) deprive such markets of the Spirit Effect's reduction on average fares. Nov. 17. 2023, Tr. Vol. 2, 123:20-124:13 (Gowrisankaran/Pls. Expert). In future Spirit markets where JetBlue does not currently offer service, the latter two types of harm would likely manifest.

C. The Proposed Acquisition Would Increase The Risk Of Coordination

1. The airline industry is susceptible to coordination

421. Coordination involves conduct (like price increases) that is only profitable for one firm because other competitors accommodate it. Nov. 17, 2023, Tr. Vol. 2, 111:11-20 (Gowrisankaran/Pls. Expert). Coordination among airlines may reduce the intensity of competition and harm consumers even without an express agreement or direct communications among airlines. Nov. 17, 2023, Tr. Vol. 2, 111:21-112:25 (Gowrisankaran/Pls. Expert). Such coordination can arise in multiple ways, including parallel accommodating conduct, resulting from a history of observing rivals' reactions, or implicit agreements reached through signaling or punishments. Nov. 17, 2023, Tr. Vol. 2, 111:21-112:25, 114:22-115:7 (Gowrisankaran/Pls. Expert).

422. Specific characteristics of markets make them more vulnerable to coordination. Nov. 17, 2023, Tr. Vol. 2, 113:1-114:2 (Gowrisankaran/Pls. Expert). As elaborated more fully below, the airline industry has many of these characteristics, in particular: (a) airline pricing is

transparent, *infra* Part V.C.1.a, (b) consumer transactions are small and rapid, *infra* Part V.C.1.b, (c) there are a small number of competitors, *infra* Part V.C.1.c, (d) airlines engage with one another across many markets ("multimarket contact"), *infra* Part V.C.1.d, and (e) there is a history of prior coordination, *infra* Part V.C.1.e. Nov. 17, 2023, Tr. Vol. 2, 116:15-120:6 (Gowrisankaran/Pls. Expert).

423. Dr. Gowrisankaran explained that the presence of these factors led him to conclude that the airline industry today is vulnerable to coordinated effects. Nov. 17, 2023, Tr. Vol. 2, 115:19-25 (Gowrisankaran/Pls. Expert). Dr. Hill declined to offer an opinion, one way or the other, on the vulnerability of today's airline industry to coordination, but admitted there have been periods in the past when tacit coordination has occurred. Nov. 27, 2023, Tr. Vol. 2, 166:15-167:11 (Hill/Defs. Expert).

a. Airline prices are transparent

424. Airlines can easily monitor their rivals' pricing. Nov. 8, 2023, Tr. Vol. 2, 126:2-8 (Hillyard/JetBlue). Airlines often file fares publicly through a clearinghouse called the "Airline Tariff Publishing Company," or "ATPCO." Nov. 2, 2023, Tr. Vol. 1, 39:16-22 (Clark/JetBlue). All domestic airlines have an ATPCO subscription and can see the fares filed by other airlines. Nov. 2, 2023, Tr. Vol. 1, 39:23-40:7 (Clark/JetBlue); *see also* Klein (Spirit) Lit. Dep. 187:24-188:2, June 27, 2023; Jarashow (JetBlue) NEA CID Dep. 102:11-14, March 31, 2021. For domestic markets, airlines can only transmit fare changes through ATPCO at four set times each weekday and at 5 p.m. on Saturday and Sunday. Nov. 8, 2023, Tr. Vol. 2, 112:18-24 (Hillyard/JetBlue); Tr. Ex. 330 at -835.

425. Airlines can and do monitor competitors' ATPCO fare changes at each transmission using pricing analysts and software tools. Nov. 8, 2023, Tr. Vol. 2, 112:10-17 (Hillyard/JetBlue); Nov. 15, 2023, Tr. Vol. 2, 151:17-23, 156:11-20 (Lage/Spirit); Nov. 16,

2023, Tr. Vol. 1, 31:23-32:15 (Lage/Spirit); Nov. 2, 2023, Tr. Vol. 1, 40:8-15 (Clark/JetBlue); *see also* Nov. 15, 2023, Tr. Vol. 2, 119:24-120:2 (Jarashow/JetBlue).

426. Pricing analysts at airlines are trained to interpret the fare actions of other airlines that appear in ATPCO. Nov. 15, 2023, Tr. Vol. 2, 156:11-20 (Lage/Spirit); Nov. 17, 2023, Tr. Vol. 2, 120:18-122:6 (Gowrisankaran/Pls. Expert); Lage (Spirit) Lit. Dep. 40:17-41:12, June 1, 2023.

427. The fares filed in ATPCO include the terms and conditions of a fare in addition to the price of a fare; terms and conditions can include how far in advance of a flight a fare is able to be purchased. Nov. 2, 2023, Tr. Vol. 1, 40:20-41:2 (Clark/JetBlue). Each fare filed in ATPCO will have an alphanumeric “fare basis code,” which reflects some of the terms and conditions of sale such as advance purchase requirements. Nov. 15, 2023, Tr. Vol. 2, 120:6-11 (Jarashow/JetBlue). Fares may also have a one- or two-digit alphanumeric footnote designator, which will reflect ticket date or travel period restrictions. Nov. 8, 2023, Tr. Vol. 2, 149:12-21 (Hillyard/JetBlue); Nov. 16, 2023, Tr. Vol. 1, 12:4-11 (Lage/Spirit).

428. The same fare basis code and the same footnote can be used to designate fares across multiple markets. Nov. 15, 2023, Tr. Vol. 2, 120:6-14, 121:15-17 (Jarashow/JetBlue); Nov. 16, 2023, Tr. Vol. 1, 12:17-20 (Lage/Spirit). An airline can use the ATPCO data to determine if an airline has filed the same fare basis code in multiple markets. Nov. 15, 2023, Tr. Vol. 2, 120:15-18 (Jarashow/JetBlue). Airlines file fare changes in ATPCO by submitting a “batch” of fares, and each batch has a distinct identifying number. Nov. 15, 2023, Tr. Vol. 2, 120:23-25 (Jarashow/JetBlue). Airlines can file multiple, distinct batches at a transmission, which allows them to file a set of fare changes with a common strategic purpose together as a unique batch. Nov. 15, 2023, Tr. Vol. 2, 121:1-10 (Jarashow/JetBlue). By noting such

similarities, rivals can use the data in ATPCO to assess another airline's strategic purpose. Nov. 15, 2023, Tr. Vol. 2, 121:22-123:5 (Jarashow/JetBlue); Nov. 16, 2023, Tr. Vol. 1, 12:21-24 (Lage/Spirit).

429. In addition to ATPCO, airlines may use other tools to observe the fares filed by competitors. Fares filed outside ATPCO, including fares filed "privately" only on an airline's own website, can be obtained by airlines "scraping" other airlines' websites. Nov. 3, 2023, Tr. Vol. 1, 58:5-59:7 (Klein/Spirit); Nov. 2, 2023, Tr. Vol. 2, 145:11-24 (Clark/JetBlue); Nov. 16, 2023, Tr. Vol. 1, 37:21-38:11 (Lage/Spirit). But scraping does not have the same level of information as is accessible through ATPCO, such as easily observing the use of a common footnote or fare basis code across multiple markets or the filing of related fares in a unique batch. Nov. 15, 2023, Tr. Vol. 2, 122:14-20 (Jarashow/JetBlue).

430. Spirit files public fares on ATPCO, but many of its fares are filed privately on Spirit.com, which makes it more difficult for JetBlue and other airlines to monitor Spirit's fares than those of other airlines. Nov. 2, 2023, Tr. Vol. 1, 45:21-46:6 (Clark/JetBlue). Other airlines have agreements with distributors requiring that any fares offered by the airline on its website also be made available through all other distribution outlets, with the effect that nearly all of their fares will be filed through ATPCO. Nov. 17, 2023, Tr. Vol. 2, 122:9-18 (Gowrisankaran/Pls. Expert); Lage (Spirit) Lit. Dep. 59:1-22, June 1, 2023; Weiner (JetBlue) Lit. Dep. 67:11-25, June 8, 2023 (describing JetBlue's full content agreements). Spirit does not have such agreements with distributors and so is able to file low fares outside of ATPCO. Nov. 17, 2023, Tr. Vol. 2, 122:9-23 (Gowrisankaran/Pls. Expert); Weiner (JetBlue) Lit. Dep. 197:7-23, June 8, 2023; Tr. Ex. 330 at -835, -836. Spirit refers to this as "an advantage." Tr. Ex. 330 at -835.

431. Therefore, although it is quite clear to JetBlue how legacy airlines price, it takes

JetBlue more steps to observe Spirit's pricing. Nov. 8, 2023, Tr. Vol. 2, 126:2-17 (Hillyard/JetBlue).

b. Transactions are small and rapid

432. Airline ticket sales are small and frequent with airlines changing fares as often as four times a day. Nov. 15, 2023, Tr. Vol. 2, 120:6-25 (Jarashow/JetBlue); *supra* Part V.C.1.a (describing the ATPCO filing times). As a result, if an airline deviates from coordination, their rivals will be able to quickly respond; this feature of a market makes coordination easier to sustain. Nov. 17, 2023, Tr. Vol. 2, 116:15-117:6-15 (Gowrisankaran/Pls. Expert).

c. Small number of competitors

433. The airline industry features a small number of firms in each origin-and-destination market, meaning that there are fewer firms to monitor and track, and the gains of coordination are greater because there are fewer participants. Nov. 17, 2023, Tr. Vol. 2, 118:20–119:1 (Gowrisankaran/Pls. Expert).

d. Multimarket contacts

434. Airlines compete with each other in many markets. Such multimarket contact increases the risk of coordination, because it can enhance the ability of airlines to punish deviation from coordination. Nov. 17, 2023, Tr. Vol. 2, 117:16-118:19 (Gowrisankaran/Pls. Expert). For example, a route from American's hub in Dallas, Texas will be more important to American, while a route from United's hub in Houston, Texas will be more important to United. *Id.* Such multimarket contact increases the risk of coordination because an airline can respond to deviations in one market by punishing the deviating airline in another market that is important to that deviating airline. *Id.*

435. The tendency of airlines to accommodate one another is illustrated by an example from a fare report prepared by Mr. Lage. Tr. Ex. 699. In the Atlanta-Philadelphia market, the no

advance purchase requirement ("0 AP") fare for the two legacy airlines (American and Delta) offering nonstop service on that route was $183. Nov. 16, 2023, Vol. 1, 49:18-50:2 (Lage/Spirit). Even though United only offered less attractive connecting service on that route, its lowest filed 0 AP fare exactly matched the American and Delta $183 fare. Nov. 16, 2023, Tr. Vol. 1, 50:16-23 (Lage/Spirit). Southwest also matched at $183 and JetBlue's fare was even higher at $298. Nov. 16, 2023, Tr. Vol. 1, 80:16-21, 79:25-80:6 (Lage/Spirit). By contrast, Spirit's lowest 0 AP fare in that market was $56. Nov. 16, 2023, Tr. Vol. 1, 49:22-50 (Lage/Spirit).

436. It is "very common" to see the filed fare levels of the Big Four lined up, *i.e.*, with similar fares. Nov. 16, 2023, Tr. Vol, 1, 51:24–52:7 (Lage/Spirit), discussing Tr. Ex. 699.

e. History of past coordination

437. As these features of the airline industry would suggest, there is a significant history of price coordination in the airline industry. Nov. 17, 2023, Tr. Vol. 2, 119:21–120:6 (Gowrisankaran/Pls. Expert).

438. In 1992, the United States brought a Sherman Act Section 1 action that resulted in a consent decree entered in 1994 (the "1994 ATPCO Decree"). *United States v. Airline Tariff Pub. Co., et al.*, 1994 WL 502091 (D.D.C. Aug. 10, 1994). The United States alleged that airlines used ATPCO to signal their actions to one another and to facilitate coordination.[11] Among other things, the United States alleged that airlines used first-ticket dates to pre-announce fare increases, used last-ticket dates and travel dates as signals, and used tags in fare basis codes and footnote designators to communicate the purpose of fare filings to one another. *Id.* at ¶¶ 20-26, 29.

439. In 2004, the United States brought an action against American Airlines for

[11] Complaint, *United States v. Airline Tariff Pub. Co., et al.,* No. 92-2854 (SSH) (D.D.C. Dec. 12, 1992), available at https://www.justice.gov/d9/atr/case-documents/attachments/1992/12/21/4796.pdf.

violations of the 1994 ATPCO Decree that resulted in a settlement. *United States v. American Airlines, Inc*., No 92-2854, Settlement Agreement and Order (D.D.C. Sept. 23, 2004).[12] The United States alleged that American Airlines used footnotes with travel dates that had little or no meaning to consumers to initiate a fare increase and used cross-market initiatives (*see infra* Part V.C.2.a) to persuade other airlines to follow the increase. *United States v. American Airlines, Inc.,* No 92-2854, Settlement Agreement and Order, *id.* at 2-3. The resulting decree with American Airlines expired in 2011.

2. ATPCO enables signaling between airline competitors

440. ATPCO's role in the industry continues to make it easier for airlines to coordinate in a variety of ways. In addition to fare transparency fostering parallel accommodating conduct, ATPCO makes it easier for airlines to signal one another. Nov. 17, 2023, Tr. Vol. 2, 120:16–121:22 (Gowrisankaran/Pls. Expert); Nov. 15, 2023, Tr. Vol. 2, 102:2-13 (Jarashow/JetBlue) (acknowledging that airlines may make filings in ATPCO intended to signal fare changes to other airlines). There are three common ways in which ATPCO facilitates airlines' ability to signal one another—cross-market initiatives, *infra* Part V.C.2.a, fare flashing, *infra* Part V.C.2.b, and tags in fare basis codes, *infra* Part V.C.2.c.

a. Cross-market initiatives

441. One method used by airlines to punish a rival for competing too intensely is a cross-market initiative. A cross-market initiative, or "CMI," occurs when one airline responds to a rival's fare decrease in one market by filing a low fare in a different market. Nov. 8, 2023, Tr. Vol. 2, 151:6-14 (Hillyard/JetBlue). The basic point of a CMI is to signal another airline to back off and raise price in the market in which it lowered its fare. Nov. 15, 2023, Tr. Vol. 2, 163:17-

[12] Settlement Agreement and Order, *United States v. American Airlines, Inc*., No 92-2854 (D.D.C. Sept. 23, 2004), available at https://www.justice.gov/d9/atr/case-documents/attachments/2004/09/23/205799.pdf.

24 (Lage/Spirit), discussing Tr. Ex. 688 at -069 (describing a CMI as "unsuccessful[]" where it failed to get another carrier to cancel fares in another market); Nov. 16, 2023, Tr. Vol. 1, 16:13-18 (Lage/Spirit); *see also* Nov. 17, 2023, Tr. Vol. 2, 120:16-121:5 (Gowrisankaran/Pls. Expert).

442. For example, in February 2019, Spirit's pricing team witnessed Southwest file a "massive" CMI against Delta, and Delta responded by canceling over 5,000 low fares within Southwest's network. Tr. Ex. 793 at -083. After Delta canceled its low fares, Southwest then canceled the CMI. Nov. 15, 2023, Tr. Vol. 2, 159:12-19, 160:2-11 (Lage/Spirit), discussing Tr. Ex. 793 at -283.

443. Airlines have used CMIs since at least the early 1980s and use them regularly today. Nov. 15, 2023, Tr. Vol. 2, 164:4-11 (Lage/Spirit) (testifying he has observed CMIs roughly once a month). For example, in the six-month period from April 2022 to September 2022, Mr. Lage observed at least 13 distinct CMIs occurring in just the Spirit domestic nonstop markets. *See, e.g.*, Tr. Ex. 464 at -715 (June 15, 2022) (observing a Southwest CMI in the Columbus, Ohio to Miami, FL market); Tr. Ex. 466 at -696 (June 10, 2022) (observing a United CMI in the Boston and Hartford to Miami markets related to a JetBlue fare action in the New York City to Miami market); Tr. Ex. 468 at -957 (June 23, 2022) (observing an American CMI related to United in the New York City to Las Vegas market); Tr. Ex 473 at -405 (June 2, 2022) (American CMI in multiple Delta markets).[13]

444. CMIs are so ingrained in the airline industry that airlines train their pricing

[13] Additional examples can be found at Tr. Exs. 482 at -337 (August 15, 2022) (Delta CMI in AUSEWR); 501 at -148 (August 31, 2022) (see native file at row 37, column R–yellow highlighting indicating United CMI in BOSFLL); 532 at -555 (August 12, 2022) (American CMI in EWR/Austin-Bergstrom International Airport ("Austin" or "AUS")/Pittsburgh International Airport ("Pittsburgh" or "PIT"); 545 at -546 (see native file at rows 86-88, columns AA-AF – yellow highlighting indicating Delta CMIs); 553 at -957 (May 11, 2022) (see native file at row 217, column AF – yellow highlighting indicting Delta CMI in LAXPHL); 570 at -457 (July 14, 2022) (American CMI); 575 at -007 (April 26, 2022) (American CMI in Delta and United markets); 597 at -480 (September 23, 2022) (United CMI in FLL/LAX and LAS-MIA/PHL); 607 at -695 (September 29, 2022) (United CMI action).

analysts how to use information in ATPCO to identify them. Lage (Spirit) Lit. Dep. 169:13-172:11, June 1, 2023 (describing features that help him identify CMIs); Nov. 17, 2023, Tr. Vol. 2, 121:12-121:22 (Gowrisankaran/Pls. Expert).

445. JetBlue avoids lowering fares if it believes it would provoke a retaliatory response by one of the Big Four. For example, during JetBlue's "ULCC test" (*see supra* Part V.B.1), JetBlue considered the risk that legacy airlines would react to JetBlue filing Spirit-level fares in some markets by expanding those fares to additional markets. Nov. 15, 2023. Tr. Vol. 2, 126:14-127:1 (Jarashow/JetBlue), discussing Tr. Ex. 791 at -148; *see also* Tr. Ex. 791 at -143; Nov. 2, 2023, Tr. Vol. 1, 53:18-56:6 (Clark/JetBlue) (explaining that JetBlue should only take a "fare-lowering action" in certain markets to avoid American interpreting JetBlue's actions as "spreading [low fares] to other markets."); Clark (JetBlue) Lit. Dep. 230:20-231:17, June 6, 2023; Tr. Ex. 408 at -988. Such a reaction by the legacy airlines might lead JetBlue to reconsider its fares in the original markets. Nov. 15, 2023, Tr. Vol. 2, 127:10-128:14 (Jarashow/JetBlue).

446. Spirit has observed instances of CMIs that targeted JetBlue. *See, e.g.*, Tr. Ex. 466 at -696 (June 10, 2022) (United CMI in Boston and Hartford to Miami markets targeting JetBlue in retaliation for JetBlue fares in New York City to Miami market); Tr. Ex. 480 at -113 (March 7, 2022) (identifying a possible United CMI related to JetBlue).

447. JetBlue itself has used CMIs to send messages to competitors through ATPCO, generally with the intent to convince the competitor to refrain from undercutting JetBlue. Nov. 8, 2023, Tr. Vol. 2, 153:23-154:13 (Hillyard/JetBlue). For example, JetBlue filed CMIs against American in February and March 2019 in response to low fares American had filed in the Boston-Los Angeles route. Nov. 15, 2023, Tr. Vol. 2, 119:11-13 (Jarashow/JetBlue); *see generally* Nov. 15, 2023, Tr. Vol. 2, 108:14-23 (Jarashow/JetBlue); Nov. 15, 2023, Tr. Vol. 2,

110:18-111:2 (Jarashow/JetBlue), discussing Tr. Ex. 789 at -997; Nov. 15, 2023, Tr. Vol. 2, 116:11-117:16 (Jarashow/JetBlue). In late February 2019, JetBlue responded to American's low $139 fare on the Boston-Angeles route (both endpoints of which are focus cities for JetBlue), by filing the same $139 fare in *different* markets in which *American* had a hub or significant operation. Nov. 15, 2023, Tr. Vol. 2, 111:3-25, 112:17-21 (Jarashow/JetBlue), discussing Tr. Ex. 789 at -997. As JetBlue's Manager of Pricing at the time explained, this action by JetBlue constituted a CMI. Nov. 15, 2023, Tr. Vol. 2, 113:8-10 (Jarashow/JetBlue). A few weeks later, American relented, raising its fares on the Boston-Los Angeles route and on other transcontinental routes to $279, and JetBlue subsequently canceled its CMI $139 fares on routes to/from American hubs. Nov. 15, 2023, Tr. Vol. 2, 116:11-117:16 (Jarashow/JetBlue). JetBlue then increased its Boston-Los Angeles fare up to $279, matching that of American for the same route. Nov. 15, 2023, Tr. Vol. 2, 119:1-10 (Jarashow/JetBlue).

b. Fare flashing

448. Airlines also use ATPCO to engage in "fare flashing," which is the "act . . . of filing and unfiling a fare [in ATPCO] in rapid succession with . . . the overall intent of communicating something between carriers." Nov. 8, 2023, Tr. Vol. 2, 140:20-24 (Hillyard/JetBlue). As JetBlue's Manager of the International Pricing Team, Evan Jarashow, acknowledged in response to a question from the Court, flashing involves an intent to signal another airline. Nov. 15, 2023, Tr. Vol. 1, 86:7-15 (Jarashow/JetBlue). A reason to "flash" a fare is to highlight a fare change to another airline with the aim of encouraging the other airline to match a fare increase. Nov. 15, 2023, Tr. Vol. 1, 86:10-15 (Jarashow/JetBlue); *see also id.* at 89:21-90:2 (noting Mr. Jarashow's direction to a colleague to cancel JetBlue's fare and refile it with the intent to "flash American"); Nov. 8, 2023, Tr. Vol. 2, 141:9–143:14 (Hillyard/JetBlue) (describing purpose of flashing a fare), discussing Tr. Ex. 370.

449. For example, in February 2020, JetBlue observed American undercutting JetBlue's prices during a particular time window. Tr. Ex. 785 at -496. JetBlue signaled American through ATPCO by "flashing" a fare to draw American's attention to the change. Nov. 15, 2023, Tr. Vol. 1, 90:3-10 (Jarashow/JetBlue); *id.* at 91:2-8; *id.* at 141:17-21 (confirming that was an example of JetBlue flashing).

450. JetBlue used a similar flash on the Boston-Baltimore, Maryland route in February 2020. Tr. Ex. 389. JetBlue observed that Southwest had filed a fare that matched the price of a JetBlue fare but, unlike JetBlue's fare, the Southwest fare did not have a last-travel date. Tr. Ex. 389 at -004-05. Because it lacked the last-travel-date restriction, the Southwest fare was undercutting the JetBlue fare for passengers looking to travel after that date. A JetBlue pricing analyst advised that she would do an "add/cancel," and if Southwest did not "add the travel restriction we should discuss next steps." Tr. Ex. 389 at -004. Southwest responded by canceling its fare. Tr. Ex. 389 at -003.

451. Airlines can also use footnote designators, last-travel dates, and last-ticket dates to signal the strategic purpose of fare actions. For example, a footnote with a last-travel date can be used to offer a low fare that is only available for a limited travel window. Nov. 15, 2023, Tr. Vol. 2, 98:21-99:3 (Jarashow/JetBlue). Shortening the last-travel date in a footnote for a low fare has the effect of raising the fare price after the shorter last-travel date. *Id.* at 99:4-8 (Jarashow/JetBlue).

452. Spirit has observed efforts by JetBlue to use last-ticket dates to get other airlines to limit the availability of low fares. In July 2020, Spirit observed that JetBlue had matched an American fare, but, unlike American, JetBlue's matching fare had a last-ticket date. Mr. Lage noted that JetBlue "is trying to possibly get AA to place a LTKT [last-ticket date] as well." Tr.

Ex. 795 at -034; Nov. 16, 2023, Tr. Vol. 1, 21:19-24:3, discussing Tr. Ex. 795 at -034; *see also* Tr. Ex. 858 (Spirit analyst indicating that JetBlue may be attempting to signal Spirit). Mr. Lage stated that an airline could use the filing of a last-ticket date to signal a fare action to another airline. Nov. 16, 2023, Tr. Vol. 1, 22:19-24:3 (Lage/Spirit).

c. Tags in fare basis codes

453. In addition to the terms and conditions of sale reflected in fare basis codes, airlines may include a character in their fare basis code that serves as a tag for the strategic purpose of the fare. For example, JetBlue includes a character in its fare basis code that is "meaningless to a consumer" and does not affect the terms or conditions of the fare offered to customers. Nov. 8, 2023, Tr. Vol. 2, 135:7-13 (Hillyard/JetBlue). Such information is simply a cosmetic part of the fare basis code – a tag. Nov. 16, 2023, Tr. Vol. 1, 9:5-24 (Lage/Spirit).

454. While these tags are not meaningful to travelers, they are reflected in decoders prepared by airlines to interpret their rivals' fare basis codes. For example, Mr. Lage explained that American uses "J" in the fourth position of its fare basis code (i.e., the fourth character of the code) to indicate fare actions directed toward JetBlue. Nov. 16, 2023, Tr. Vol. 1, 8:21-9:4 (Lage/Spirit). Similarly, Delta has identified that "J" in the fourth position of an American fare basis code is a tag for fares related to JetBlue. Nov. 17, 2023, Tr. Vol. 2, 121:23-122:6 (Gowrisankaran/Pls. Expert). Spirit's fare basis decoder also shows other airlines using a character in their fare basis codes as a tag. Nov. 16, 2023, Tr. Vol. 1, 11:2-17 (Lage/Spirit) (discussing United using the sixth position); Tr. Ex. 332 at tab "DL" (showing Delta using the eighth position); Tr. Ex. 332 at WN tab (showing Southwest using the fifth position).

455. Spirit's Senior Pricing Manager provided an example of how these tracking codes help a pricing analyst understand the strategic purpose of a rival's fare action. Nov. 16, 2023, Tr. Vol. 1, 9:25-10:4 (Lage/Spirit). For example, United uses the character "H" to refer to "JetBlue"

in the sixth position of its fare basis codes; if Mr. Lage observes "H" in the sixth position of a United fare basis code, he infers the fare is a cross-market initiative aimed at JetBlue. Nov. 16, 2023, Tr. Vol. 1, 11:3-17 (Lage/Spirit). Similarly, if Mr. Lage observes JetBlue filing a fare increase in one transmission and then observes American filing a fare increase in the next transmission with a "J" in the fourth position of its fare basis code, Mr. Lage can infer that the American fare is a response to the JetBlue increase. Nov. 16, 2023, Tr. Vol. 1, 10:5-16 (Lage/Spirit). JetBlue, for its part, reviews other airlines' fare basis codes for "market intelligence" and to better understand its rivals' fares. Nov. 8, 2023, Tr. Vol. 2, 138:22-139:6 (Hillyard/JetBlue); *see also* Hillyard (JetBlue) Private Plaintiffs' Dep. 13:15-14:2, June 27, 2023 (explaining "in the effort to gain understanding of [JetBlue's] competitors," JetBlue has "reviewed fare basis codes of, I think to put it generally, all of our competition").

3. The Proposed Acquisition increases the risk of coordination among JetBlue and the Big Four

456. One important way in which the Proposed Acquisition will increase the risk of coordination is by removing a competitor in already concentrated markets. Nov. 17, 2023, Tr. Vol. 2, 118:20-119:1 (Gowrisankaran/Pls. Expert). With fewer competitors after the Proposed Acquisition, it will be easier for the remaining competitors to come to a tacit understanding about prices, monitor rivals' actions, and punish rivals that deviate from the understanding. Nov. 17, 2023, Tr. Vol. 2, 116:1-9 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 52. There are two additional ways in which the Proposed Acquisition increases the risk of coordination: (a) it removes a maverick from the airline industry by eliminating Spirit, *see infra* Part V.C.3.a, and (b) it increases JetBlue's incentives to engage in coordination, *see infra* Part V.C.3.b; *see also* Nov. 17, 2023, Tr. Vol. 2, 118:20-119:19 (Gowrisankaran/Pls. Expert).

a. The Proposed Acquisition eliminates Spirit's disruptive presence

457. Spirit acts as a pricing maverick, disrupting coordination. Nov. 17, 2023, Tr. Vol. 2, 115:19-25, 122:9-123:9 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 55. Even Defendants' expert, Dr. Hill, acknowledged that Spirit is a disruptive force and lowers the risk of coordination in markets where it competes today. Nov. 27, 2023, Tr. Vol. 2, 168:16-22 (Hill/Defs Expert); *see also* Nov 27, 2023, Tr. Vol 2, 168:13-15 (Hill/Defs. Expert) (recognizing that an industry can have more than one maverick). The loss of Spirit as a maverick would result in an increased risk of coordination. Nov. 17, 2023, Tr. Vol. 2, 125:9-22 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 58.

458. Spirit's maverick nature is reflected in its pricing strategies that it will "price what is best for [its] markets" and has "no obligation to 'follow the herd,'" *i.e.*, the pricing decisions of other airlines, when it comes to industry pricing initiatives. Tr. Ex. 330 at -840 (slide 10, in color); *see also* Nov. 3, 2023, Tr. Vol. 1, 60:15-17 (Klein/Spirit) (agreeing that Spirit prices based on what it believes is best for Spirit's markets); Klein (Spirit) Lit. Dep. 189:24-191:18, June 27, 2023, discussing Tr. Ex. 340 at -840 (slide 10, in color) (understanding "follow the herd" to refer to airlines taking similar pricing actions at similar times). Spirit trains its Pricing Team employees accordingly. *See generally* Tr. Ex. 327 (including a "Pricing at Spirit Airlines" presentation alongside a training schedule); *see also* Nov. 3, 2023, Tr. Vol. 1, 54:17-21 (Klein/Spirit), discussing Tr. Ex. 330 (stating that he would not doubt that Tr. Ex. 330 was used to train analysts within Spirit's Pricing Team).

459. Spirit's independence is underscored by the fact that, unlike the Big Four and JetBlue, Spirit has not engaged in CMIs. Lage (Spirit) Lit. Dep. 167:20-168:7, June 1, 2023. Nor do other airlines direct CMIs at Spirit. *Id.* at 168:8-11, 169:13-23.

460. Spirit has also disrupted attempts at coordination – including by JetBlue – on

multiple occasions. For example, in May 2020, JetBlue tried to lead a fare increase on the Hartford-Fort Lauderdale route, but rescinded when Southwest did not match the increase. Spirit ascribed Southwest's reluctance to follow JetBlue's increase to Spirit's presence in the market. Lage (Spirit) Lit. Dep. 138:7-17, June 1, 2023, discussing Tr. Ex. 855 at -043-44. In January 2021, Spirit observed another fare increase attempt by JetBlue, but observed that it was unlikely to succeed because legacy airlines would not want to increase the fares they were using to compete with ULCCs. Nov. 16, 2023, Tr. Vol. 1, 27:4-6, 27:15-25 (Lage/Spirit), discussing Tr. Ex. 449 at -670.

461. As described in detail earlier, Spirit's business model is differentiated from the Big Four and JetBlue through its low cost structure and unbundled product. *See supra* Parts I.A & II.D.3-5. Although Spirit competes with the Big Four and JetBlue for cost-conscious travelers, Spirit targets such travelers almost exclusively such that they are a bigger part of Spirit's customer base than they are for these other airlines. Nov. 17, 2023, Tr. Vol. 2, 122:9-123:9 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 55. As a result, Spirit has a greater incentive than the other airlines to keep fares low to stimulate demand. *Id*.

462. Although Spirit has observed that other airlines "[t]end to file a competitive response to every fare filed in ATPCO," Tr. Ex. 330 at -840 (slide 10, in color); Nov. 3, 2023, Tr. Vol. 1, 60:5-9 (Klein/Spirit), discussing Tr. Ex. 330 at -840 (slide 10, in color), Spirit will "price what is best for [its] markets at the time of [its pricing] analysis and [is] willing to change/modify those amounts as needed," Tr. Ex. 330 at -840 (slide 10, in color); Nov. 3, 2023, Tr. Vol. 1, 60:15-17 (Klein/Spirit); Klein (Spirit) Lit. Dep. 189:24-190:8, June 27, 2023. JetBlue pricing executives recognize Spirit's independence, noting that Spirit matches JetBlue's fares

less regularly. Weiner (JetBlue) CID Dep. 290:12-18, Jan. 31, 2023.

463. Features of Spirit's business model insulate Spirit from retaliation from the Big Four. First, because of its low-cost structure and resulting low fares relative to other airlines, it is less susceptible to CMIs. Nov. 17, 2023, Tr. Vol. 2, 123:11-124:12 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 56; Tr. Ex. 830; *see also* Healy (Campbell-Hill) Lit. Dep. 76:2-12, 76:20-77:5, June 29, 2023. Second, because Spirit's nonstop routes typically overlap with JetBlue and/or one of the Big Four, it cannot be effectively targeted by a rival without creating a significant risk for that rival of provoking a response from another, larger carrier on the route. Nov. 17, 2023, Tr. Vol. 2, 124:14-125:7 (Gowrisankaran/Pls. Expert); *see also supra* Part II.D.6; Nov. 7, 2023, Tr. Vol. 2, 118:21-119:1 (Kirby/Spirit) (noting "[i]t's rare [Spirit is] in a market where there isn't competition"). Spirit's network structure makes Spirit less susceptible than JetBlue to targeted punishments by other airlines because a lower percentage of Spirit's markets could be plausible targets for retaliation by rivals. Nov. 17, 2023, Tr. Vol. 2, 124:14-125:7 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 57; Tr. Ex. 807.

464. Empirical evidence also confirms that Spirit is less likely than JetBlue to accommodate the Big Four; an analysis of the fare reports prepared by Mr. Lage in 2022 concluded that Spirit had lower posted fares than the Big Four in over 90 percent of the observations. Nov. 17, 2023, Tr. Vol. 1, 123:11-124:12 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 56; Tr. Ex. 830. In contrast, JetBlue had the same or higher fare than the Big Four in roughly 80 percent of the observations. Nov. 17, 2023, Tr. Vol. 1, 123:11-124:12 at 124:6–12 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 56; Tr. Ex. 830.

b. The Proposed Acquisition increases JetBlue's incentives to coordinate with the Big Four

465. At the same time the Proposed Acquisition eliminates Spirit as an independent disruptive force, it increases JetBlue's incentives to coordinate on pricing with the other airlines. Nov. 17, 2023, Tr. Vol. 2, 125:9-22 (Gowrisankaran/Pls. Expert). JetBlue will become more like a legacy airline by becoming bigger on more routes and operating more like a hub-and-spoke carrier through, for example, the creation of a Midwest hub and increased market share at Fort Lauderdale and Orlando. Nov. 17, 2023, Tr. Vol. 2, 118:20-119:19, 125:9-22 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 58; Nov. 9, 2023, Tr. Vol. 1, 68:15-23 (Friedman/JetBlue) (JetBlue plans to create a connecting Midwest hub); *see also* Nov. 20, 2023, Tr. Vol. 1, 41:23-43:9 (Gowrisankaran/Pls. Expert). Defendants' expert acknowledged that the Proposed Acquisition could change JetBlue's incentives, Nov. 27, 2023, Tr. Vol. 2, 169:4-7 (Hill/Defs. Expert), and that, if the Proposed Acquisition results in JetBlue increasing its focus on loyalty, competing for corporate contracts, and operating lots of connecting itineraries, JetBlue's incentives may change, Nov. 27, 2023, Tr. Vol. 2, 170:6-10 (Hill/Defs. Expert).

466. Although JetBlue has disrupted coordination in the past and entry from JetBlue has historically resulted in lower average fares, JetBlue has, unlike Spirit, sometimes engaged in coordinated activity. As discussed above, JetBlue has employed flashing to signal another airline, *supra* Part V.C.2.b; it considers the prospect of retaliatory cross-market initiatives when making pricing decisions, *supra* Part V.C.2.a; and it has been on the receiving end of cross-market initiatives *supra* Part V.C.2.a.

467. Mr. Hillyard admitted that JetBlue sometimes matches fare increases initiated by other airlines. Nov. 8, 2023, Tr. Vol. 2, 164:22-25 (Hillyard/JetBlue). There are many examples

of Spirit observing JetBlue following a fare increase initiated by one of the legacy airlines or Southwest. *See, e.g.*, Tr. Ex. 471 at -835; Tr. Ex. 567 at -931; Tr. Ex. 540 at -156; Tr. Ex. 464 at -715; Tr. Ex. 605 at -637; Tr. Ex. 595 at -413.

468. JetBlue also initiates fare increases itself, as illustrated by an increase initiative that JetBlue undertook in March 2021. Nov. 2, 2023, Tr. Vol. 1, 43:3-13 (Clark/JetBlue) discussing Tr. Ex. 388 at -568. There are many other examples of Spirit observing JetBlue initiating fare increases. *See, e.g.*, Tr. Ex. 449 at -670 (reporting on a "B6 Substructure Increase" on January 28, 2021); Tr. Ex. 450 at -256 (relaying a JetBlue NYC/EWR-FLL/MIA initiative involving canceling multiple low level fares on February 27, 2021); Tr. Ex. 451 at -800 (conveying information about a $10 JetBlue increase on May 7, 2020); Tr. Ex. 472 at -160 (indicating that JetBlue increased 0, 3, and 7 day advance-purchase fares by $5 on April 23, 2022); Tr. Ex. 564 at -424 (reporting a $10 JetBlue increase for 7 day advance-purchase fares on the Austin-Los Angeles route on June 17, 2022).

469. The Proposed Acquisition would further increase the number of routes in which JetBlue is the largest airline, therefore removing a competitor in Spirit—which is asymmetric to the other airlines—while simultaneously making JetBlue even more symmetric with its remaining rivals. Nov. 17, 2023, Tr. Vol. 2, 119:2-19, 125:9-22 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 58. A significant percentage of JetBlue's network involves routes where it has the highest market share, often more than 50 percent, which is a percentage similar to that of the networks of legacy airlines. Nov. 17, 2023, Vol. 2, 124:14-125:7 at 125:3-7 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 57; Tr. Ex. 807. The Proposed Acquisition would remove the asymmetric Spirit, increase the number of routes in which JetBlue is the largest airline, and, thereby, make JetBlue more

symmetric with the major airlines. Nov. 17, 2023, Tr. Vol. 2, 118:20-119:19, 125:9-22 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 58 (reflecting Tr. Ex. 807). Defendants' expert, Dr. Hill, did not perform any quantitative analysis to determine the likelihood that JetBlue's incentives would remain the same after the Proposed Acquisition is completed. Nov. 27, 2023, Tr. Vol. 2, 169:8-12 (Hill/Defs. Expert).

D. Econometric Evidence Conservatively Estimates That The Proposed Acquisition Would Cost American Consumers Nearly $1 Billion Annually In Higher Fares Across The Relevant Markets

1. Empirical analysis demonstrates that consumers in more than 175 relevant markets will face significant harm as a result of the Proposed Acquisition

470. To estimate gross harm from the elimination of Spirit, 62 historic Spirit entry events from 2017 to 2019 were analyzed to assess how Spirit affected market-wide average fares when it entered each market. Nov. 17, 2023, Tr. Vol. 2, 127:23-128:13 (Gowrisankaran/Pls. Expert). Consistent with the revenue synergies analysis performed by JetBlue's Eric Friedman, this analysis found that fares would meaningfully increase in relevant markets if Spirit were eliminated. *See supra* Part II.D.7; *infra* Part VI.A.1.

471. The estimated gross harm to consumers from eliminating Spirit in the Spirit-only and in the nonstop overlap markets ranges from $4.2 billion to $4.5 billion annually. Nov. 17, 2023, Tr. Vol. 2, 134:15-135:8 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 66; *see also* Tr. Ex. 842.[14]

472. Fifty-five million total passengers flew in the nonstop overlap markets in which gross harm was estimated, from the third quarter of 2021 to the second quarter of 2022. *See* Tr. Ex. 842 (adding rows 1 through 265 of the "Market Passengers" column). For that same time

[14] If historical entry events in larger markets are given more weight in the econometric analysis, the result is the smaller figure. If all historical entry events are given equal weight in the analysis, it produces the larger figure. The details of the methodology are discussed further in note 15, *infra*.

period, 135 million passengers flew in origin-and-destination markets flown nonstop by Spirit. *See id.* (adding all rows of the "Market Passengers" column).

473. Quantifying the gross harm from the loss of Spirit was achieved in two overarching steps. First, the 62 historic Spirit market entries were used to evaluated how much Spirit's entry lowered market-wide average fares, taking into consideration the size of the market and the number of flights with which Spirit entered (*i.e.*, the "relative capacity" with which Spirit entered each market). *Id.* at 128:5-22, 130:21-131:10 (discussing Tr. Exs. 810 and 817), 139:24-140:3.

474. A regression analysis was used to systematically estimate the size of Spirit's effect on market prices.[15] Nov. 17, 2023, Tr. Vol. 2, 130:21-131:10 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Presentation at slide 63 and Tr. Ex. 817. A regression is a well-substantiated econometric tool that controls for factors that might change over time that are not related to the entry event itself. Nov. 17, 2023, Tr. Vol. 2, 102:6-103:5 (Gowrisankaran/Pls. Expert).[16]

475. In the second step, the regression results were used to estimate what would likely happen in two categories of relevant markets in which Spirit would be eliminated as a competitor: (1) nonstop overlap markets in which both JetBlue and Spirit compete today; and (2) Spirit-only nonstop markets (in which JetBlue either provides no service or only provides

[15] Dr. Gowrisankaran presented his regression results using both an unweighted and weighted regression. An unweighted regression (which treats each entry event equally) is most appropriate to use in this case because it is consistent with how airlines set price on a market-by-market basis. Nov. 17, 2023, Tr. Vol. 2, 104:6-105:16 (Gowrisankaran/Pls. Expert). A weighted regression gives more weight to larger markets. Nov. 17, 2023, Tr. Vol. 2, 104:6-105:16 (Gowrisankaran/Pls. Expert). Dr. Gowrisankaran provided results for both unweighted and weighted regressions, since he found that the results from the weighted regression were more favorable to Defendants. Nov. 17, 2023, Tr. Vol. 2, 104:6-105:16 (Gowrisankaran/Pls. Expert). Both weighted and unweighted regressions are justified by established econometric techniques. Nov. 17, 2023, Tr. Vol. 2, 104:6-105:16 (Gowrisankaran/Pls. Expert).

[16] Dr. Gowrisankaran allowed the regression analysis to determine the shape of the best-fit curved line through his plot of relative capacity against the Spirit Effect. Nov. 17, 2023, Tr. Vol. 2, 131:11-18 (Gowrisankaran/Pls. Expert).

connecting service). Nov. 17, 2023, Tr. Vol. 2, 132:16-133:1, 141:9-142:7 (Gowrisankaran/Pls. Expert). The Spirit regression was then used to estimate the corresponding price increase when Spirit is removed from each market. *Id.* at 133:22-134:13, discussing Gowrisankaran Direct Presentation at slides 64-65.

476. Because JetBlue has indicated it would utilize the Spirit planes after the Proposed Acquisition, a net harm analysis was utilized to determine the extent to which JetBlue's use of the Spirit planes may offset the gross harm from the loss of Spirit. Nov. 17, 2023, Tr. Vol. 2, 134:18-135:8 at 135:1-16 (Gowrisankaran/Pls. Expert) (discussing this conversion efficiency claim).

477. For purposes of his net harm analysis, the favorable-to-Defendants assumption was made that JetBlue would use the Spirit planes in the same markets that Spirit serves today. Nov. 17, 2023, Tr. Vol. 2, 135:19-24 (Gowrisankaran/Pls. Expert). Although this is consistent with Defendants' May 2023 New Combined Network Plan—which was prepared after this litigation commenced, *see infra* Part VII.D.4—this is inconsistent with JetBlue's incentives post-Proposed Acquisition to reduce capacity in the nonstop overlap markets, Nov. 17, 2023, Tr. Vol. 2, 136:13-137:20 (Gowrisankaran/Pls. Expert). Consistent with JetBlue's changed incentives post-Proposed Acquisition, JetBlue's prior evaluation of a potential acquisition of Spirit also assumed significant redeployment of Spirit aircraft from the markets in which they currently operate. *See infra* Part VI.A.2. If JetBlue were to redeploy planes from any relevant market, the net harm from the Proposed Acquisition would be greater than Dr. Gowrisankaran reported. Nov. 17, 2023, Tr. Vol. 2, 137:13-137:20 (Gowrisankaran/Pls. Expert).

478. To accurately capture the effects of JetBlue using the Spirit planes, it was necessary to analyze how effective each carrier was on lowering market-wide average prices on a

per-plane basis. Nov. 17, 2023, Tr. Vol. 2, 137:22-139:2 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 808. This is particularly important because, on average, JetBlue enters markets with more frequency than Spirit. *Id.* In other words, not accounting for each airline's per plane effect on market-wide average fares would overstate JetBlue's ability to lower market-wide average fares relative to that of Spirit by taking over Spirit's planes. Nov. 17, 2023, Tr. Vol. 2, 139:3-15 (Gowrisankaran/Pls. Expert).

479. On a per-plane basis, Spirit is nearly twice as effective as JetBlue at lowering market-wide average prices when it enters a new market. Nov. 17, 2023, Tr. Vol. 2, 139:3-11 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 808. Similarly, estimated regressions based on the Spirit and JetBlue entry events demonstrated that, within the range of historical data, Spirit had a larger effect than JetBlue on market-wide average fares on a plane-for-plane basis. *Id.* at 140:4-141:7, discussing Tr. Ex. 817.

480. Two examples demonstrate how net harm was calculated. In the Hartford-Miami market, JetBlue and Spirit provide competing nonstop service today. Nov. 17, 2023, Tr. Vol. 2, 143:3-146:19 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slides 76-77. The price increase associated with the elimination of Spirit is first identified, providing an estimate of gross harm. Then, the price reduction associated with retuning the eliminated Spirit aircraft to service as JetBlue aircraft is netted off, providing an estimate of net harm. *Id.* at 143:3-146:19 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slides 76-77. The price decrease associated with the JetBlue Effect is based on an incremental increase in capacity since JetBlue is already in the market. *Id.* at 145:14-18. A 15 percent price increase was identified as the net harm in this market. *Id.* at 146:7-9, discussing Gowrisankaran Direct Presentation at slide 77.

481. The Las Vegas-San Francisco market is a Spirit-only nonstop market in which Spirit offers nonstop service today, but JetBlue does not. In that market, and others like it, JetBlue's conversion of the Spirit planes in this market is treated as new JetBlue entry. Nov. 17, 2023, Tr. Vol. 2, 141:9-142:7 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slides 73-75.

482. Even accounting for JetBlue's use of Spirit planes after the Proposed Acquisition, the Proposed Acquisition still results in substantial annual harm to consumers.[17] A market-by-market net harm analysis was performed and then aggregated into the market categories identified below. Nov. 17, 2023, Tr. Vol. 2, 149:23-150:4 (Gowrisankaran/Pls. Expert); *see also* Tr. Exs. 811, 818, 842, and 843. Passengers traveling in more than 175 relevant markets would face higher fares as a result of the Acquisition. Tr. Exs. 842 and 843.

Total Annual Net Harm – Weighted Regression (Based on Tr. Ex. 811)		
Category of Markets	Number of Markets	Total Annual Net Harm
Nonstop Overlap Markets	73	$750.8 million
Spirit-Only Nonstop Markets	191	$193.3 million
Total	**264**	**$944 million**

Total Annual Net Harm – Unweighted Regression (Based on Tr. Ex. 818)		
Category of Markets	Number of Markets	Total Annual Net Harm

[17] The net harm model was also applied to each of the nonstop overlap and Spirit-only markets using the all-inclusive price from the produced carrier ticket data. Total aggregated net harm in these markets is approximately $1.05 billion (weighted) annually based on the all-inclusive price consumers paid. Nov. 17, 2023, Tr. Vol. 2, 151:1-11 (Gowrisankaran/Pls. Expert); *see also* Tr. Ex. 819. For the nonstop overlap markets, total aggregated net harm is $933 million (weighted) annually. Tr. Ex. 819. For the Spirit-only markets, total aggregated net harm is $112 million (weighted) annually. Tr. Ex. 819.

Nonstop Overlap Markets	73	$1.092.2 billion
Spirit-Only Nonstop Markets	191	$1.473.1 billion
Total	**264**	**$2.565 billion**

483. The nonstop overlap markets accounted for the most harm annually, consistent with the reality that consumers in these markets will face the most acute harm due to the loss of competition between JetBlue and Spirit. Nov. 17, 2023, Tr. Vol. 2, 150:6-12 (Gowrisankaran/Pls. Expert).[18]

2. Dr. Hill's critiques do not substantially change these net harm estimates

484. At trial, Defendants' expert, Dr. Hill, offered various critiques to Dr. Gowrisankaran's econometric approach for estimating harm from the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 148:5-150:3, 152:9-154:4 (Hill/Defs. Expert), discussing Hill Demonstrative H. When all but one of Dr. Hill's critiques are applied together to Dr. Gowrisankaran's analysis, the net harm is still above $600 million (weighted) annually in the nonstop overlap markets and more than $30 million (weighted) annually in the Spirit-only nonstop markets.[19] Nov. 20, 2023, Tr. Vol. 1, 32:15-34:21 (Gowrisankaran/Pls. Expert); *id.* at

[18] Aggregated net harm results have a greater degree of certainty because any idiosyncratic variation across routes will be accounted for in the aggregated estimate. Nov. 20, 2023, Vol. 1, 134:5-135:4, 147:24-148:15 (Gowrisankaran/Pls Expert). Market-level estimates are reliable, but they have less precision than the aggregated estimate of net harm. Nov. 20, 2023, Vol. 1, 137:25-138:7 (Gowrisankaran/Pls Expert).

[19] Dr. Hill criticized Dr. Gowrisankaran's use of an intercept term, which allowed the regression lines to intercept the y-axis at a point other than zero. Nov. 20, 2023, Tr. Vol. 1, 35:7-37:1 (Gowrisankaran/Pls. Expert). Practically, this would have incorrectly forced Dr. Gowrisankaran's analysis to find that the Spirit has no effect on market-wide average fares with very low capacity. *Id.*; Tr. Ex. 817. Dr. Hill argued that excluding the intercept term from Dr. Gowrisankaran's model is a "small" change that drastically reduces Dr. Gowrisankaran's net harm estimate. Nov. 27, 2023, Tr. Vol. 1, 45:5-46:8; Tr. Vol. 2, 154:14-25 (Hill/Defs. Expert). But, as Dr. Gowrisankaran explained, utilizing an intercept term allowed the regression lines to best reflect the relationship in the underlying data, and omitting the intercept term and forcing the regression line to go through zero would result in a biased estimate. Nov. 20, 2023, Tr. Vol. 1, 35:7-36:11 (Gowrisankaran/Pls. Expert). Tellingly, Dr. Hill did not cite to any academic paper or other literature to support his critique concerning Dr. Gowrisankaran's use of an intercept term. Nov. 27, 2023, Tr. Vol. 2, 154:19-155:5 (Hill/Defs. Expert). For these reasons, Dr. Gowrisankaran did not adjust his model to address the criticism that he used an intercept term. Nov. 20, 2023, Tr. Vol. 1, 35:1-36:11 (Gowrisankaran/Pls. Expert).

33:6-13, discussing Tr. Exs. 835.

3. Dr. Hill's model ignores nonstop overlap markets in which JetBlue and Spirit compete today

485. Although Defendants' expert, Dr. Hill, designed his own "entry intensity" model to evaluate the competitive impact of JetBlue and Spirit when they enter new markets, he did not apply his model to assess competitive effects in the nonstop overlap markets in which JetBlue and Spirit compete today.[20] Nov. 27, 2023, Tr. Vol. 2, 106:8-11 (Hill/Defs. Expert). Dr. Hill acknowledged that is model was not "set up" to be applied to nonstop overlap markets. Nov. 27, 2023, Tr. Vol. 2, 107:6-25 (Hill/Defs. Expert). As a result, Dr. Hill did not offer an alternative estimate of net harm. Nov. 27, 2023, Tr. Vol. 1, 88:24-89:14 (Hill/Defs. Expert).

486. Dr. Hill confirmed that the entry intensity model he designed to analyze the Proposed Acquisition, cannot be reliably used in the nonstop overlap markets in which both JetBlue and Spirit compete today. Nov. 27, 2023, Tr. Vol. 2, 108:22-109:2 (Hill/Defs. Expert). This is atypical for Dr. Hill: in prior cases where he was asked to evaluate a potential transaction, he typically analyzed head-to-head competition between the merging parties. Nov. 27, 2023, Tr. Vol. 2, 109:3-6 (Hill/Defs. Expert).

487. In fact, Dr. Hill could not recall ever before building a model for evaluating competitive effects associated with a horizontal merger that could not be applied to markets in which the two merging parties compete. Nov. 27, 2023, Tr. Vol. 2, 109:7-11 (Hill/Defs. Expert).

[20] Instead of using his model to evaluate harm in the overlap markets in which JetBlue and Spirit compete against each other today, Dr. Hill determined whether each market had one or more purported "disqualifying deficiencies," and if a market had even one such deficiency, he determined that was sufficient by itself to conclude there would be no harm in that market. Nov. 27, 2023, Tr. Vol. 2, 140:16-141:1 (Hill/Defs. Expert). For example, if a market had market shares that did not meet the presumption, he concluded there would be no harm, even if the market shares would otherwise warrant further scrutiny. *Id.* at 141:19-22, 144:17-145:2 (agreeing there were 12 such nonstop overlaps to which Dr. Hill applied a disqualifying deficiency). Similarly, Dr. Hill applied a disqualifying deficiency to any market that touched a divestiture airport, even if the divestiture buyer was unlikely to use the divestiture assets to fly in that market. *Id*. 145:8-11, 146:23-147:9 (acknowledging that he applied such a disqualifying deficiency to the Miami-Lima market even though Allegiant had no definitive plans to fly internationally, outside Mexico, anytime soon). This is how Dr. Hill came up with his of 15 nonstop "holdout routes." *Id.* at 141:2-6.

This is despite the fact that Dr. Hill acknowledged Spirit is an effective competitor, consumers can benefit from both JetBlue and Spirit, and that some customers prefer Spirit's lower unbundled fares to the higher fares offered by JetBlue. Nov. 27, 2023, Tr. Vol. 2, 109:16-110:1 (Hill/Defs. Expert). Moreover, Dr. Hill confirmed that as a result of the Proposed Acquisition, there are some customers who would prefer to fly Spirit but, instead, will have to pay, on average, higher fares to fly on JetBlue or another airline. Nov. 27, 2023, Tr. Vol. 2, 110:12-19 (Hill/Defs. Expert).

488. Failing to include the nonstop overlap markets in his analysis undermines Dr. Hill's conclusions because the nonstop overlap markets are the markets most affected by the Proposed Acquisition due to the loss of head-to-head competition between Spirit and JetBlue. Nov. 20, 2023, Tr. Vol. 1, 11:9-12:10 at 11:25-12:10 (Gowrisankaran/Pls. Expert); *see also* Tr. Exs. 820, 821.

489. Even though Dr. Hill claims he could not reliably use his own model to analyze the Proposed Acquisition's effects in the nonstop overlap markets, Dr. Gowrisankaran was, in fact, able to apply Dr. Hill's model to the nonstop overlap markets and found significant net harm. Applying Dr. Hill's model to the nonstop overlap markets and also addressing his flawed approach of ignoring Spirit's own fares, *see supra* Part V.D.3, resulted in more than $700 million in annual net harm, consistent with Dr. Gowrisankaran's own results. Nov. 20, 2023, Tr. Vol. 1, 28:10-29:20 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 825. A version of Dr. Hill's model that included nonstop overlap markets and excluded Spirit's prices and customers—as Dr. Hill did—still resulted in annual net harm exceeding $300 million in these relevant markets. *Id.*

VI. JETBLUE'S PLANS FOR THE COMBINED AIRLINE CONFIRM CONSUMERS WOULD BE HARMED

A. JetBlue's Revenue Synergy Estimates Are Evidence Of Consumer Harm

490. As discussed, Spirit customers are attracted to Spirit in large part due to Spirit's lower fares compared to those of other airlines, including JetBlue. *Supra* Part II.D.3; *see also* Nov. 7, 2023, Tr. Vol. 1, 15:9-14 (Gardner/Spirit); Friedman (JetBlue) 30(b)(6) CID Dep. 226:16-227:3, Jan. 19, 2023. Spirit customers are also attracted to Spirit because it provides customers the flexibility to only pay for the additional products they want, which helps Spirit's customers further reduce their fares. *Supra* Part II.D.3. In fact, roughly one-third of Spirit customers do not purchase any add-on products Spirit offers. *Supra* Part II.D.3.

491. But, as soon as the Proposed Acquisition is consummated, JetBlue would control the price of seats on Spirit aircraft. Nov. 17, 2023, Tr. Vol. 1, 24:8-15 (Hurley/JetBlue); *see also* Nov. 21, 2023, Tr. Vol. 1, 14:21-15:10 (Chipty/Pls. Expert) (finding the harm from JetBlue increasing prices could happen quickly). And JetBlue has calculated anticipated "revenue synergies" based on the increased amount JetBlue expects to be able to earn from former Spirit customers paying JetBlue's higher fares relative to what Spirit would have earned on its own. Nov. 9, 2023, Tr. Vol. 1, 8:7-15 (Friedman/JetBlue). However, as Spirit observed—accurately—half of JetBlue's projected synergies from the Proposed Acquisition would come "from reduced capacity and increased fares." *Supra* Part III.C; Oct. 31, 2023, Tr. Vol. 2, 131:5-10 (Christie/Spirit); Tr. Ex. 349 at -898; Christie (Spirit) Lit. Dep. 237:3-238:20, June 6, 2023.

492. Dave Clark presented estimates for the purported revenue synergies for which he was responsible to the JetBlue Board of Directors in June of 2022. Nov. 2, 2023, Tr. Vol. 1, 71:15-72:17. These categories of revenue synergies included (1) a customer service premium, *infra* Part VI.A.1, (2) network optimization, *infra* Part VI.A.2, (3) increased relevance, *infra* Part

VI.A.3, and (4) competitive origin and destination network, *infra* Part VI.A.4. Nov. 9, 2023, Tr. Vol. 1, 71:15-72:17; Tr. Ex. 656. In addition, JetBlue calculated purported revenue synergies from increased sales of travel and loyalty products. *Infra* Part VI.A.5.

493. Without these expected revenue synergies, the Proposed Acquisition would produce net-negative synergies for JetBlue, because the cost synergies alone are significantly negative. Nov. 9, 2023, Tr. Vol. 1, 12:3-14:2 (Friedman/JetBlue), discussing Tr. Ex. 403 at -599.

494. JetBlue's revenue synergies, accordingly, do not quantify or include consumer savings in the form of lower fares. Nov. 9, 2023, Tr. Vol. 1, 11:7-18 (Friedman/JetBlue).

1. JetBlue's concrete plans to convert the Spirit product to the JetBlue product would result in higher prices, regardless of whether consumers want or value the JetBlue product

495. JetBlue calculated a so-called "customer service premium" synergy, which represents the increased revenue JetBlue expects to earn per unit of capacity from converting Spirit planes to JetBlue planes. Nov. 9, 2023, Tr. Vol. 1, 16:1-10, 18:3-17 (Friedman/JetBlue).

496. JetBlue's estimate of the "customer service premium" it could charge after the acquisition does not reflect any benefit to consumers in the form of fare reductions resulting from JetBlue entry into old Spirit routes. Nov. 9, 2023, Tr. Vol. 1, 24:23-25:23 (Friedman/JetBlue), discussing Tr. Ex. 413 at -756. In addition, the calculation assumes no increase in passenger traffic following JetBlue's entry into the old Spirit routes. Nov. 9, 2023, Tr. Vol. 1, 25:9-20 (Friedman/JetBlue), discussing Tr. Ex. 413 at -756; *see also* Friedman (JetBlue) 30(b)(6) CID Dep. 92:23-93:8, Jan. 19, 2023.

497. The Chairman of Spirit's Board of Directors, H. McIntyre Gardner, explained JetBlue's synergy plans similarly: "[i]f you were selling a seat for a hundred dollars, and then you were going to sell it for 150, that would be a synergy, increased revenue." Gardner (Spirit) Lit. Dep. 122:25-123:5, June 27, 2023. Mr. Gardner also testified this plan would ultimately

result in higher prices for Spirit consumers. Nov. 7, 2023, Tr. Vol. 1, 15:9-14 (Gardner/Spirit).

498. In March 2022, to calculate this customer service premium synergy, JetBlue analyzed data from 2014 to 2018 that showed that, one year after Spirit exited 12 routes, average fares increased 30 percent and fewer passengers flew on those route. *See supra* Part II.D.7. After fares increased and passengers left the market, JetBlue calculated the share of the remaining market (post-Spirit exit) that JetBlue would obtain through re-entry with the reconfigured planes from Spirit's former fleet; this yielded a 24 percent revenue premium for JetBlue compared to Spirit. Nov. 9, 2023, Tr. Vol. 1, 20:16-24:2 (Friedman/JetBlue), discussing Tr. Ex. 413 at -756; Friedman (JetBlue) 30(b)(6) CID Dep. 210:7-211:24, 212:14-18, Jan. 19, 2023.

499. JetBlue relied on the 30 percent rise in average fares after Spirit's exit from a route to calculate a 24 percent increase in revenue per available seat mile ("RASM") after the Proposed Acquisition. Nov. 9, 2023, Tr. Vol. 1, 24:15-18 (Friedman/JetBlue); Nov. 1, 2023, Tr. Vol. 2, 103:13-15 (Christie/Spirit).

500. JetBlue estimated it would earn higher revenues from the customer service premium on every route on which JetBlue planned to continue to fly the former Spirit planes, which accounts for the majority (five-sixths) of the former Spirit network. Nov. 9, 2023, Tr. Vol. 1, 16:11-17:10 (Friedman/JetBlue).

501. As part of the "New Combined Network Plan" that JetBlue put together by May of 2023, *see infra* Part VII.D.4, JetBlue used the 24 percent customer service premium figure to calculate the revenues expected from the New Combined Network Plan. Nov. 9, 2023, Tr. Vol. 1, 73:8-19 (Friedman/JetBlue), discussing Tr. Ex. 362 at -928.

502. The higher fares that JetBlue estimated due to the customer service premium may understate the potential harm to customers given that JetBlue had also modeled even higher

revenue increases. In an alternative analysis, JetBlue compared the TRASM ("total revenue per available seat miles") that it and Spirit earned on the overlap routes in which they competed against each other. Based on this data, JetBlue determined that its TRASM was 41 percent higher than Spirit's. JetBlue opted not to use this higher revenue increase estimate in its deal model to be "conservative." Nov. 9, 2023, Tr. Vol. 1, 18:18-20:15 (Friedman/JetBlue), discussing Tr. Ex. 413 at -756; Nov. 2, 2023, Tr. Vol. 1, 37:8-10 (Clark/JetBlue) (defining "TRASM").

2. JetBlue's "network optimization" synergy would harm Spirit consumers on the routes in which JetBlue would no longer offer service

503. JetBlue's "network optimization" synergy refers to taking Spirit planes from their existing routes and sending them to new routes. Nov. 9, 2023, Tr. Vol. 1, 26:23-27:9 (Friedman/JetBlue), discussing Tr. Ex. 403 at -601; Nov. 2, 2023, Tr. Vol. 1, 76:2-77:1 (Clark/JetBlue); Gorelik (JetBlue) Lit. Dep. 157:23-158:3, 158:11-21, June 16, 2023.

504. JetBlue modeled that it would stop service on certain routes that Spirit, but not JetBlue, served prior to the Proposed Acquisition, *e.g.*, Houston to Chicago. *See* Tr. Ex. 436 at -850 (providing this information in tab "NK P&L View," row 122). Because JetBlue did not already serve those routes, the result would be that the combined firm would no longer serve those Spirit routes at all. Nov. 9, 2023, Tr. Vol. 1, 39:11-46:13 (Friedman/JetBlue), discussing Tr. Ex. 436 at -850 and Friedman Demonstratives B and C.

505. Based on this analysis, in JetBlue's revenue synergies model, JetBlue modeled redeploying, *i.e.*, removing, aircraft from approximately 127 of the 313 Spirit routes. Nov. 9, 2023, Tr. Vol. 1, 39:4-10 (Friedman/JetBlue), discussing Friedman Demonstrative C. This network optimization synergy reflects harm to consumers in the former Spirit markets that JetBlue would exit as a result of the Proposed Acquisition. The harm results from the reduction in options on those routes and the higher prices that would result from not having Spirit on the

route. Nov. 21, 2023, Tr. Vol. 2, 98:18-100:4 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 65.

506. Between 2017 and 2020, when previously contemplating acquiring Spirit, JetBlue repeatedly modeled removing Spirit aircraft from their current routes for redeployment. Nov. 14, 2023, Tr. Vol. 1, 23:17-24:10 (Friedman/JetBlue); Tr. Ex. 416 at -232 (modeling that redeploying more than half of Spirit's network would be more profitable than not redeploying it); *id.* at -237 (depicting the impact of redeploying more than half of the Spirit network); Tr. Ex. 692 at -829 (modeling redeployment of 36 Spirit aircraft or "shells").

3. "Increased relevance" means JetBlue would price more like the legacy carriers

507. JetBlue also modeled a revenue synergy from "increased relevance" to customers. Nov. 9, 2023, Tr. Vol. 1, 46:24-47:21 (Friedman/JetBlue), discussing Tr. Ex. 403 at -601; Friedman (JetBlue) CID Dep. 54:4-25, Jan. 20, 2023; *see also* Nov. 21, 2023, Tr. Vol. 2, 87:4-17 (Chipty/Pls. Expert). The increased relevance synergy refers to JetBlue's purported ability to generate additional revenue as a result of having increased presence at certain airports. The higher the seat share at a given airport, the higher the revenue premium the combined firm could achieve. Nov. 9, 2023, Tr. Vol. 1, 47:8-49:14 (Friedman/JetBlue). JetBlue calculated this synergy by assuming it would charge higher prices closer to those charged by legacy airlines. Tr. Ex. 403 at -601.

508. The primary customer segments JetBlue intends to target with this synergy are high-end leisure customers, corporate customers, and credit card point acquirers. Friedman (JetBlue) 30(b)(6) CID Dep. 112:8-113:13, Jan. 19, 2023. According to JetBlue's CEO, having a larger presence at an airport enables an airline to capture more business travelers and, therefore, increase average fares. Nov. 6, 2023, Tr. Vol. 2, 132:14-18 (Hayes/JetBlue).

509. JetBlue's Network Planning Team provided input for the "increased customer

relevance" synergy by looking at carrier performance relative to other airlines based on the amount of service offered at each city served. Friedman (JetBlue) 30(b)(6) CID Dep. 131:3-22, Jan. 19, 2023. JetBlue specifically examined the premiums that Southwest, American, Delta, and United earn at airports in which they have high share. Nov. 9, 2023, Tr. Vol. 1, 52:10-54:1 (Friedman/JetBlue), discussing Tr. Ex. 692.

510. This relevance synergy reflects JetBlue's view that having a greater presence at airports would allow JetBlue to raise prices commensurate with legacy-carrier-like pricing power. Nov. 21, 2023, Tr. Vol. 2, 87:4-88:19 (Chipty/Pls. Expert); Nov. 9, 2023, Tr. Vol. 1, 54:8-21 (Friedman/JetBlue) ("That's what you see from Delta, United, and American, and that's who we want to compete against[.]"). Mr. Friedman described this synergy as reflecting JetBlue's aim to obtain increased "pricing power" at airports where it will achieve a higher share post-Proposed Acquisition. Nov. 9, 2023, Tr. Vol. 1, 51:10-16, discussing Tr. Ex. 692 at -830. Academic research has also found that increased airport presence can be net harmful to consumers because of the increased pricing power that it creates. Nov. 21, 2023, Tr. Vol. 2, 87:4-88:19 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 59.

4. JetBlue's plans to increase connecting traffic at Fort Lauderdale airport would reduce nonstop, local traffic from Fort Lauderdale

511. The competitive origin-and-destination synergy calculated by JetBlue reflects the increased revenue JetBlue expects to collect as a result of combining the two airlines' presence at Fort Lauderdale airport and creating a hub alternative to the Miami and Atlanta airports. Nov. 9, 2023, Tr. Vol. 1, 55:18-57:11 (Friedman/JetBlue). JetBlue valued this synergy at $150 million annually. Nov. 9, 2023, Tr. Vol. 1, 57:12-15 (Friedman/JetBlue).

512. JetBlue's modeling of the claimed efficiency of increased connecting service through Fort Lauderdale explicitly references connecting passengers that are estimated to

generate a higher fare than nonstop passengers on that same segment. Nov. 21, 2023, Tr. Vol. 2, 91:19-93:14 (Chipty/Pls. Expert). JetBlue's modeling in support of the increased-connectivity synergy shows that local traffic would decrease 6.3 percent in nonstop markets to and from Fort Lauderdale. Nov. 21, 2023, Tr. Vol. 2, 91:19-93:14 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 61; *see also* Friedman (JetBlue) Lit. Dep. 248:1-250:4, June 21, 2023.

5. JetBlue's plans to increase sales of travel and loyalty products would increase consumer switching costs

513. JetBlue's travel product synergy refers to the increased revenue JetBlue expects to make from selling travel products to a new customer base. Klinka (JetBlue) 30(b)(6) CID Dep. 101:18-102:10, Jan. 12, 2023; Tr. Ex. 34 at -296. Likewise, JetBlue's loyalty products synergy refers to the increased revenue JetBlue expects to make from additional customers signing up for JetBlue's loyalty program, "TrueBlue." Tr. Ex. 34 at -296.

514. These travel and loyalty product synergies are not pro-competitive. Economic research has found that such programs increase carriers' ability to charge higher fares by increasing customer switching costs. Nov. 21, 2023, Tr. Vol. 91:1-16 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 60. In addition, any benefits created by increased sales of travel products and use of loyalty programs would not offset the harms to passengers created by the Proposed Acquisition because they are not products in the relevant markets defined by Dr. Gowrisankaran. Nov. 21, 2023, Tr. Vol. 91:1-16 (Chipty/Pls. Expert).

B. JetBlue's Deal Synergy Analyses Calculated That JetBlue Would Incur Significant Costs As A Result Of The Proposed Acquisition

515. JetBlue's calculations of cost synergies and dis-synergies indicate that JetBlue expects to incur significant costs as a result of the Proposed Acquisition. Nov. 9, 2023, Tr. Vol. 1, 13:13-21 (Friedman/JetBlue), discussing Tr. Ex. 403 at -599; Nov. 17, 2023, Tr. Vol. 1, 19:11-

21 (Hurley/JetBlue).

516. Cost dis-synergies include increased labor costs as well as costs associated with changing the customer “flying experience” to that of JetBlue, which includes the added costs of live T.V., Wi-Fi, snacks, and non-alcoholic beverages. Nov. 17, 2023, Tr. Vol. 1, 19:3-10 (Hurley/JetBlue). These are not one-time costs but dis-synergies, meaning JetBlue costs that will continue to remain higher every year after the integration process is complete. Nov. 17, 2023, Tr. Vol. 1, 19:22-20:14 (Hurley/JetBlue).

517. In addition to the recurring cost dis-synergies, JetBlue estimates that it will incur a one-time $800 million cost to retrofit the Spirit planes to the JetBlue configuration. Nov. 17, 2023, Tr. Vol. 1, 23:6-8 (Hurley/JetBlue); *see also* Friedman (JetBlue) Lit. Dep. 222:8-225:13, June 21, 2023, discussing Tr. Ex. 416 at -231; Nov. 6, 2023, Tr. Vol. 1, 37:24-38:9 (Hayes/JetBlue).

518. JetBlue’s deal model assumes that JetBlue will remove seats from Spirit’s aircraft to reconfigure them to match JetBlue’s layout of passenger accommodations (“LOPA”). Nov. 16, 2023, Tr. Vol. 1, 71:4-18 (Roeschke/JetBlue), discussing Tr. Ex. 797 at -584; *see also* Nov. 17, 2023, Tr. Vol. 1, 13:6-20 (Hurley/JetBlue), discussing Tr. Ex. 800 at -320; Hurley (JetBlue) Lit. Dep. 300:17-22, June 21, 2023; Friedman (JetBlue) CID Dep. 43:9-44:5, Jan. 20, 2023, discussing Tr. Ex. 403 at -600. This means JetBlue plans to remove 20 seats from each of Spirit’s A320 aircraft and 28 or more seats from each of Spirit’s A321 aircraft to match JetBlue’s current LOPA—an assumption that drives the calculation of revenue synergies. Tr. Ex. 908; *see also* Klinka (JetBlue) Lit. Dep. 100:7-13, June 1, 2023. This reconfiguration, which would begin right away if the Proposed Acquisition were approved, would mean that over ten percent of seats on Spirit’s aircraft would be eliminated. Nov. 17, 2023, Tr. Vol. 1, 23:21-24:2, 24:4-7

(Hurley/JetBlue).

519. This conversion of Spirit aircraft to JetBlue's LOPA necessarily means less available capacity on Spirit's non-overlap routes, which would harm consumers. Nov. 21, 2023, Tr. Vol. 2, 104:14-105:25 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 67.

C. JetBlue's Plans For "Fleet Rationalization" Mean That The Proposed Acquisition Would Result in Fewer Total Aircraft Than If The Airlines Remained Independent

1. Without the Proposed Acquisition, Spirit planned to acquire additional aircraft

520. On a standalone basis, Spirit planned to grow its fleet between 2022 and 2026 resulting in a compound annual growth rate of 16 percent, as measured by networkwide ASMs. Nov. 21, 2023, Tr. Vol. 1, 30:22-32:9 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 17; Tr. Ex. 293 at -251 (noting, in Spirit's May 2023 Five-Year Network Plan, Spirit's expectation that it would have roughly 165 more aircraft by 2028); *see also supra* Part II.E.6 (discussing Spirit's future growth).

521. Specifically, Spirit's Five-Year Financial Plan from June 2022 contemplated [redacted] aircraft deliveries between [redacted]. *See* Hurley (JetBlue) Lit. Dep. 173:24-177:7, June 21, 2023; Nov. 16, 2023, Tr. Vol. 2, 97:3-6 (Hurley/JetBlue).

522. Spirit's Five-Year Financial Plan reflects Spirit's best estimate of [redacted] and includes in [redacted]. *See* Haralson (Spirit) Lit. Dep. 251:22-253:11, 302:8-303:3, June 7, 2023; Nov. 16, 2023, Tr. Vol. 1, 58:22-59:15 (Roeschke/JetBlue); Nov. 16, 2023, Tr. Vol. 2, 106:1-107:23 (Hurley/JetBlue), discussing Tr. Ex. 798 at -503. Spirit's Five-Year Financial Plan is updated at least annually and is intended to be a realistic "economic forecast or model" for the next five years. Oct. 31, 2023, Tr. Vol. 2, 112:25-113:11 (Christie/Spirit); Christie (Spirit) Lit. Dep. 114:5-116:1, 116:9-117:3, 117:6-118:1, June 6, 2023.

523. The fleet size reflected in Spirit's Five-Year Financial Plan includes not only committed aircraft delivery orders that Spirit was obligated to take, but also additional aircraft that Spirit intended to obtain through exercising options or entering additional leases to meet its growth targets. Nov. 16, 2023, Tr. Vol. 2, 107:15-23 (Hurley/JetBlue), discussing Tr. Ex. 798 at -503; *see also* Nov. 16, 2023, Tr. Vol. 1, 69:19-70:1 (Roeschke/JetBlue), discussing Tr. Ex. 797 at -584.

524. Spirit also maintains a "fleet plan," but, unlike the Five-Year Financial Plan, the fleet plan does not include additional, uncommitted aircraft that Spirit anticipated being able to procure. Nov. 16, 2023, Tr. Vol. 2, 97:7-10 (Hurley/JetBlue); *see also* Nov. 16, 2023, Tr. Vol. 1, 69:1-12 (Roeschke/JetBlue), discussing Tr. Ex. 797 at -584 (confirming that Spirit's Five-Year Financial Plan assumed that Spirit would get additional, noncommitted aircraft not represented in the 2025 Spirit fleet plan/order book).

525. Spirit provided its Five-Year Financial Plan from June 2022 to JetBlue as part of due diligence for the Proposed Acquisition. Nov. 16, 2023, Tr. Vol. 1, 58:4-7 (Roeschke/JetBlue) (confirming that JetBlue received Spirit's Five-Year Financial Plan during due diligence).

2. JetBlue's plans and recent actions show JetBlue would likely acquire fewer planes if the Proposed Acquisition proceeds

526. JetBlue understood that Spirit's standalone growth plan contemplated growing its fleet by about 15 percent. Roeschke (JetBlue) Lit. Dep. 46:13-25, 149:13-150:9, June 27, 2023; *see also* Tr. Vol. 2, Nov. 16, 2023, 132:13-18 (Hurley/JetBlue) (noting that Spirit has, historically, targeted a growth rate in the mid-teens). JetBlue, historically, has targeted a growth rate of about five to nine percent. Nov. 16, 2023, Tr. Vol. 2, 132:10-12 (Hurley/JetBlue). JetBlue's strategic plan for the combined firm's future fleet growth rate targets approximately a [redacted] annual growth rate. Roeschke (JetBlue) Lit. Dep. 153:9-14, 153:18-154:5, June 27,

2023, discussing Tr. Ex. 799 at -988-89; *see also* Tr. Ex. 797 at -584. JetBlue views four-to-five percent as the optimal growth rate for sustainable revenue generation for its brand. Klinka (JetBlue) Lit. Dep. 243:5-24, June 1, 2023.

527. JetBlue calculated that it would need to forego delivery of 36 aircraft that were in Spirit's Five-Year Financial Plan in order to achieve its "desired" five-percent annualized growth rate for the combined firm. Nov. 16, 2023, Tr. Vol. 1, 77:8-13 (Roeschke/JetBlue), discussing Tr. Ex. 797 at -548; *id.* at 71:19-77:13; *see also* Roeschke (JetBlue) Lit. Dep. 78:19-79:12, 87:16-88:9, 95:12-20, 95:23-98:1, June 27, 2023. Ms. Roeschke described this modeled reduction in aircraft deliveries as "fleet rationalization." Nov. 16, 2023, Tr. Vol. 1, 63:22-64:4 (Roeschke/JetBlue), discussing Tr. Ex. 797. JetBlue did this fleet rationalization modeling in May 2022, "in the middle" of the "deal-modeling process." Nov. 16, 2023, Tr. Vol. 1, 66:4-20 (Roeschke/JetBlue).

528. After completing its fleet rationalization modeling in May 2022, JetBlue used the resulting number of targeted aircraft from its model to create a growth plan for the Spirit fleet, which JetBlue called the "Spirit Standalone Plan"; this plan contemplated fewer aircraft than Spirit's own Five-Year Financial Plan. Nov. 16, 2023, Tr. Vol. 1, 60:20-61:2 (Roeschke/JetBlue). In order to achieve JetBlue's desired five-percent combined growth rate, JetBlue determined that the combined firm would not exercise Spirit's options to purchase aircraft and would not pursue Spirit's incremental leases. Nov. 16, 2023, Tr. Vol. 1, 60:20-61:9 (Roeschke/JetBlue).

529. The financial modeling JetBlue used to obtain financing for, and Board approval of, the Proposed Acquisition assumed that post-acquisition, Spirit would receive fewer aircraft overall than the standalone Spirit had planned. Nov. 16, 2023, Tr. Vol. 1, 57:11-21, 60:15-61:2,

66:21-67:7, 69:1-12 (Roeschke/JetBlue), discussing, in part, Tr. Ex. 797. And, consistent with JetBlue's fleet rationalization modeling, the financial model JetBlue sent to its financing partner, Goldman Sachs, assumed that the combined firm would not pursue most of the options and incremental leases in Spirit's plan. Nov. 16, 2023, Tr. Vol. 1, 75:7-25 (Roeschke/JetBlue), discussing Tr. Ex. 797.

530. JetBlue's internal documents further indicate JetBlue's plans to slow the delivery of aircraft in Spirit's order book. *See* Roeschke (JetBlue) Lit. Dep. 80:5-24, June 27, 2023. For example, a JetBlue employee, Alla Gorelik, was instructed to model a future fleet growth plan for the combined firm that would achieve a five-percent annualized growth rate. Gorelik (JetBlue) Lit. Dep. 228:2-4, 228:6-229:8, June 16, 2023. Ms. Gorelik determined that deferrals of Spirit's aircraft delivery would be required in 2024-2026 to achieve a five-percent annualized fleet growth rate for the combined firm. Gorelik (JetBlue) Lit. Dep. 234:23-235:15, 235:21-236:11, 236:15-238:1, June 16, 2023.

531. Following through on these plans, JetBlue has already acted to slow the growth of the combined company and restrict the combined fleet size. For example, in November 2022, Spirit requested JetBlue's consent under the Acquisition Agreement to: (1) acquire or purchase up to 21 additional aircraft for delivery in 2025 through direct leases; and (2) acquire or purchase up to six additional aircraft for delivery in 2026 through either direct leases or exercising existing aircraft purchase options with Airbus. Nov. 16, 2023, Tr. Vol. 2, 106:1-19 (Hurley/JetBlue), discussing Tr. Ex. 798. Mr. Klinka explained that his recommendation not to approve Spirit's request followed from the modeling of a smaller desired fleet for the combined firm. Nov. 17, 2023, Tr. Vol. 1, 33:17-34:11 (Klinka/JetBlue). In an email to Ms. Hurley and others, he wrote: "we do not believe the combined entity will need this many aircraft and . . . so given the choice,

we would prefer not to take them." Tr. Ex. 799 at -989. Ms. Hurley replied to Mr. Klinka, writing: "At this point I have little to no interest in increasing the size of our combined order books." Nov. 16, 2023, Tr. Vol. 2, 114:23-115:10 (Hurley/JetBlue), discussing Tr. Ex. 799 at -988.

532. In addition, as of April 2023, with the Proposed Acquisition pending, JetBlue decided to forego five aircraft leases it would have acquired in its prior standalone plan. Nov. 9, 2023, Tr. Vol. 1, 77:12-78:13 (Friedman/JetBlue), discussing Tr. Ex. 363 at -812. JetBlue recognized that "[i]n an organic world, these [aircraft] could have contributed to cash-positive growth in a delivery-delay-prone world." Tr. Ex. 363 at -847. Nonetheless, JetBlue management decided not to pursue these aircraft. Nov. 9, 2023, Tr. Vol. 1, 81:18-82:11 (Friedman/JetBlue).

533. Given the substantial debt JetBlue will take on as a result of the acquisition, *see supra* Part III.F, it is financially beneficial for JetBlue to engage in [redacted], *i.e.*, [redacted]. Hayes (JetBlue) CID Dep. 295:15-297:17, Jan. 24, 2023.

534. Reducing the size of the fleet for the combined company is a lever that JetBlue can use to reduce debt, increase free cash flow, and slow the growth of the combined company. Nov. 16, 2023, Tr. Vol. 2, 99:13-100:20, 101:24-102:15 (Hurley/JetBlue).

535. JetBlue also saw an acquisition as an opportunity to reduce the size of the combined fleet, thereby reducing the merged company's debt, when it considered buying Spirit in 2019 and 2020. Nov. 16, 2023, Tr. Vol. 2, 98:7-21 (Hurley/JetBlue); *see also* Tr. Ex. 424 at -663 (noting that 59 total aircraft deferrals would "slow[ ] growth through integration" and help JetBlue return to lower leverage ratios during JetBlue's 2019-2020 consideration of acquiring Spirit); *id*. at -671 (indicating that JetBlue's capital expenditure, or "capex," synergy modelling

in 2020 included 59 aircraft deferrals); Hurley (JetBlue) Lit. Dep. 69:24-70:3, June 21, 2023.

VII. DEFENDANTS HAVE FAILED TO REBUT THE GOVERNMENT'S CASE

536. As discussed *infra*, Defendants cannot rebut the Government's case because other airlines cannot replace the competition that Spirit brings to each relevant market. *Infra* Part VII.A. Even if other airlines, namely other ULCCs, could backfill Spirit's capacity and competitive effect in a relevant market—which they cannot—there are entry barriers like airport gate and slot constraints that make entry by those airlines unlikely. *Infra* Part VII.B. Defendants' proposed divestitures to Frontier and Allegiant of gates and ground support equipment at four airports face regulatory hurdles and, in any event, do not guarantee that those two airlines will replace Spirit's capacity on the routes Spirit serves today. *Infra* Part VII.C. Defendants have also failed to establish that any "efficiencies" will increase output or offer any other competitive benefits to offset the harms in the relevant markets. *Infra* Part VII.D.

A. Other Airlines Cannot Replace The Competition Spirit Brings In Each Relevant Market

537. As discussed *infra*, entry or expansion by the Big Four cannot replace the competition offered by Spirit today. *Infra* Part VII.A.1. Other ULCCs do not have the fleets to replace Spirit and cannot grow quickly enough to replace Spirit's capacity for many years, including because of aircraft availability constraints. *Infra* Part VII.A.2-3. In addition, there is no guarantee that these ULCCs would serve any of the routes harmed by the Proposed Acquisition (even if they had additional scale), because Spirit's routes are not necessarily the best "fit" for those ULCCs' pre-existing networks. *Infra* Part VII.A.4. Finally, no other ULCC brings the same competitive intensity, depth of service, international capabilities, and sustained presence on the types of routes that Spirit serves today. *Infra* Part VII.A.5-8.

1. Basic economy and LCC products are not a replacement for Spirit's ultra-low-cost unbundled fares

538. United, Delta, American, and JetBlue have adopted a basic economy product to compete against ULCCs. *Supra* Part II.D.1. Southwest's base offering is less unbundled and it does not have a product that is equivalent to Spirit's products or other airlines' basic-economy offerings. Nov. 27, 2023, Tr. Vol. 2, 137:9-13 (Hill/Defs. Expert).

539. Despite offering unbundled fare options, other airlines are unlikely to replace the competition offered by Spirit today. *First*, the legacy airlines and JetBlue do not focus on price-sensitive customers who prefer an unbundled offering to the same extent that Spirit does. They make significant investments in premium products to attract different customer segments, and these investments drive their costs higher and well above Spirit's. *Supra* Part II.D.1; Nov. 28, 2023, Tr. Vol. 1, 32:11-33:8 (Nocella/United) (agreeing that United's "United Next" initiative is trying to "decommoditize air travel," turn away from a "pure focus on price," and increase the number of "premium seats"); Beck (Delta) 30(b)(6) Lit. Dep. 150:13-151:21, July 12, 2023 ([redacted]); Tr. Ex. 130 at -796 (comparing main cabin economy offerings to basic economy on United). Southwest's bundled offering is also higher cost than Spirit. Nov. 14, 2023, Tr. Vol 1, 40:15-19 (Biffle/Frontier) (distinguishing Southwest from ULCCs as a mid-cost carrier); Tr. Ex. 340 at -400.

540. *Second*, legacy airlines limit the amount of basic economy service they offer. *Supra* Part II.D.1.

541. *Third*, the Big Four each engage in cross-market initiatives and other coordination that limits competition. *See supra* Parts V.C.2-3. Spirit does not engage in similar coordinated

behavior. *See supra* Part V.C.3.a.

542. *Fourth*, as a result of their higher costs and desire to sell higher-priced tickets, the Big Four and JetBlue are less likely to offer the same amount of low-priced tickets in a market as Spirit does today, and at the same fare levels—particularly if they no longer face competition from Spirit and have no need to provide low, unbundled fares to match Spirit. Friedman (JetBlue) 30(b)(6) CID Dep. 240:19-241:4, Jan. 19, 2023 ("I don't mean to be flippant, but I don't know how we could offer a fare similar to Spirit if they're not in the market"). Spirit has among the lowest fares, especially as compared to the Big Four and JetBlue. *Supra* Parts II.D.3-4.

543. Replacement of Spirit by the legacies' basic economy offering and Southwest is at odds with Defendants' justification for the Proposed Acquisition. For example, Defendants' expert, Dr. Hill, argued that on one hand the Proposed Acquisition will enable JetBlue to better compete against Southwest, while on the other indicated that Southwest is well-positioned to remedy potential harm associated with the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 137:20-25 (Hill/Defs. Expert).

2. Limited aircraft availability constrains airline growth

544. As discussed *supra*, one of the largest issues facing airlines is obtaining aircraft. *Supra* Part II.C.1; Nov. 6, 2023, Tr. Vol. 1, 31:2-9 (Hayes/JetBlue).

545. Aircraft are massively delayed because of supply chain and engine constraints. Nov. 6, 2023, Tr. Vol. 1, 29:24-31:1 (Hayes/JetBlue).

546. An airline looking to purchase a new aircraft today would have to wait until 2029-2030 to take delivery from Airbus. Nov. 6, 2023, Tr. Vol. 1, 31:11-20 (Hayes/JetBlue).

547. A limited number of aircraft, one or two, may be available sooner, in 2026-2027, from lessors. Hayes (JetBlue) Lit. Dep. 96:7-97:16, June 14, 2023. However, the Airbus delivery

delays are affecting arrangements with aircraft lessors as well as direct deliveries. Haralson (Spirit) 30(b)(6) Lit. Dep. 48:22-49:3, June 7, 2023.

548. Even United's Chief Commercial Officer described "Boeing and Airbus being unable to produce new jets on a timely manner" as a constraint to growth he believes both United and the wider industry are facing. Nocella (United) Lit. Dep. 91:2-92:12, June 28, 2023.

549. Frontier has run into issues with Airbus delivering planes in accordance with its orders. Nov. 14, 2023, Tr. Vol. 1, 44:10-12 (Biffle/Frontier). In 2023, Frontier was supposed to receive 30 planes and it instead will receive around 20. Nov. 14, 2023, Tr. Vol. 1, 44:13-15 (Biffle/Frontier). Frontier's growth has been reduced by around ten percent this year relative to its plan because of the delays. Nov. 14, 2023, Tr. Vol. 1, 44:22-24 (Biffle/Frontier). The Airbus delays could persist for three to four years and Frontier will carry a backlog of 15-25 aircraft in the interim. Nov. 14, 2023, Tr. Vol. 1, 45:21-46:11 (Biffle/Frontier).

550. As of July 2023, Airbus was running about six months behind schedule in delivering aircraft to Breeze with additional delays expected in 2024 due to engine issues. Neeleman (Breeze) Lit. Dep. 35:1-10, July 17, 2023. Breeze's CEO described the situation as "fluid" and said that Breeze did not "have any certainty." Neeleman (Breeze) Lit. Dep. 35:7-10, July 17, 2023.

551. Delays in aircraft delivery "cascade [] down" to ULCCs that mostly acquire used aircraft and impact their ability to acquire additional aircraft. Nov. 3, 2023, Tr. Vol. 1, 42:18–43:3 (Yealy/Avelo).

552. Avelo has had to forego entering certain new markets that it had planned to enter because it has not been able to obtain all of the aircraft it had planned to acquire in 2023. It will end the year with a fleet of 16 aircraft, as opposed to the 18 initially planned. Yealy (Avelo) Lit.

Dep. 54:18–55:7, June 27, 2023. For example, [redacted]. Yealy (Avelo) Lit. Dep. 76:1-21, June 27, 2023.

3. Other ULCCs cannot grow fast enough to restore the competition Spirit brings to each Relevant Market in timely manner

553. Other ULCCs will not be able to grow fast enough to replace Spirit competition in a timely manner. Individually, in 2022, Frontier was about 35 percent smaller than Spirit, Allegiant was about 64 percent smaller, Sun Country was about 89 percent smaller, and Breeze and Avelo were negligible in total size. Nov. 21, 2023, Tr. Vol. 1, 25:19-26:2 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 13; Tr. Ex. 863.

554. **Frontier:** Frontier is unlikely to grow at the rate necessary to replace Spirit. Today, Frontier does not have enough planes to replace Spirit's existing service, and it would need to redeploy from its other routes to do so. Nov. 14, 2023, Tr. Vol. 2, 113:15-114:5 (Biffle/Frontier).

555. Frontier's current order book pre-dates the announcement of the Proposed Acquisition and was made independently to support its pre-existing plan of adding routes and increasing frequency on existing routes. Nov. 14, 2023, Tr. Vol. 1, 43:12-20 (Biffle/Frontier); Nov. 14, 2023, Tr. Vol. 2, 111:21-112:9 (Biffle/Frontier). To support those preexisting plans, Frontier plans to take delivery of 20 aircraft in 2024, and around that same amount each year thereafter through 2026. This amounts to a growth rate around 15 percent for the next several years. Nov. 14, 2023, Tr. Vol. 1, 43:21-44:9 (Biffle/Frontier). These growth rates are slightly faster than Frontier's historical growth rates for ASMs (13 percent per year). Nov. 21, 2023, Tr. Vol. 1, 69:13-70:21 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 45.

556. Still, Frontier does not have enough planes, engines, or pilots to replace Spirit on all of its routes and keep flying its existing schedule. Nov. 14, 2023, Tr. Vol. 1, 64:23-65:9

(Biffle/Frontier). Nor does Frontier have firm orders to grow to have the same number of aircraft that both Frontier and Spirit have combined. Nov. 14, 2023, Tr. Vol. 1, 56:18-57:2 (Biffle/Frontier). Dr. Hill did not independently study Frontier's ability to get additional planes. Nov. 27, 2023, Tr. Vol. 2, 134:23-135:1 (Hill/Defs. Expert).

557. Frontier's CEO estimated it would take Frontier five to eight years to replace Spirit and operate its existing schedule based on its current plan of 15-20 percent annual growth. Nov. 14, 2023, Tr. Vol. 1, 65:10-66:1 (Biffle/Frontier); Nov. 14, 2023, Tr. Vol. 2, 117:22-25 (Biffle/Frontier). But this estimate does not include maintaining Frontier's pre-existing growth plan in addition to serving Spirit's routes. Nov. 14, 2023, Tr. Vol. 1, 66:2-66:19 (Biffle/Frontier). Based on its historical growth rate of 13 percent per year, it would take Frontier about five years to replace 50 percent of Spirit's capacity without accounting for either company's standalone growth. Nov. 21, 2023, Tr. Vol. 1, 69:13-70:21 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 45. Mr. Biffle testified that any shorter timeline for Frontier to replace Spirit would be a "guess." Nov. 14, 2023, Tr. Vol. 1, 65:10-21 (Biffle/Frontier).

558. **Allegiant:** Allegiant is unlikely to grow at the rate necessary to replace Spirit in a timely manner. Between 2013 and 2022, Allegiant grew at a rate of ten percent per year. Nov. 21, 2023, Tr. Vol. 1, 74:11-75:8 (Chipty/Pls. Expert).

559. Today, however, Allegiant has moderated its previous growth rates and expects to grow only slightly in 2024. Tr. Ex. 703 at -326 (conveying the recent Allegiant earnings call statement that Allegiant is "treading carefully with capacity in early 2024 . . . and expecting the first half of the year to be fairly flat with a full year target of up mid-single digits"); *id*. at -330 (relaying, in the same earnings call statement, that Allegiant would not "grow like a weed" and that its 75 percent noncompetitive profile will continue going forward); Tr. Ex. 704 at -344

(providing full year 2023 growth guidance of zero to three percent growth with actual growth of approximately 1.5 percent).

560. Spirit has recognized that Allegiant has effectively stopped growing with respect to available seat miles. Kirby (Spirit) Lit. Dep. 280:24-281:6, 281:21-282:9, May 26, 2023.

561. In an August 2021 presentation to its Board, Spirit included a competitive assessment of Allegiant, which reflected that Spirit was 158 percent larger than Allegiant by ASMs and that Spirit was growing faster than Allegiant. Nov. 7, 2023, Tr. Vol. 1, 9:12-11:5 (Gardner/Spirit); Tr. Ex. 679 at -944, -950, -955.

562. As of that time, it was Spirit's assessment that Allegiant had a "limited runway for growth," Nov. 7, 2023, Tr. Vol. 1, 11:11-21, and "breadth but no depth," Nov. 7, 2023, Tr. Vol. 1, 12:2-7 (Gardner/Spirit); Tr. Ex. 679 at -981, -982.

563. Although Allegiant has many planes on order and options over the next few years, Nov. 15, 2023, Tr. Vol. 1, 22:17-24:1 (Wells/Allegiant), these aircraft are intended to support Allegiant's forecasted growth before factoring in additional growth stemming from the Proposed Acquisition. Nov. 15, 2023, Tr. Vol. 1, 36:10-25 (Wells/Allegiant).

564. Even if Allegiant were to return to the much higher growth rate of ten percent, which exceeds its current growth rate, it would require Allegiant nine years to grow to replace 50 percent of Spirit's capacity. Nov. 21, 2023, Tr. Vol. 1, 74:11-75:8 (Chipty/Pls. Expert), discussing Tr. Ex. 874.

565. **Other ULCCs:** Other ULCCs will not fill the gap. Avelo operates only 16 aircraft. Nov. 3, 2023, Tr. Vol. 1, 8:24-25 (Yealy/Avelo). Breeze had 31 aircraft as of July 2023. Neeleman (Breeze) Lit. Dep. 38:11-25, July 17, 2023. Sun Country had 42 passenger planes at the end of 2022. Tr. Ex. 72 at -271.

566. **<u>All ULCCs</u>:** Growth by all ULCCs collectively, including Frontier, Allegiant, Sun Country, Avelo, and Breeze is unlikely to replace Spirit in a timely manner. Other ULCCs would have to grow their total ASMs nationally by 85 percent to replace Spirit's 2022 capacity and maintain their current service. Based on their five-year historical growth rates of 51 percent over the period 2017 to 2022, it would take other ULCCs more than five years to replace Spirit's 2022 capacity and maintain their current service. Nov. 21, 2023, Tr. Vol. 1, 28:1-29:23 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 15.

567. Assuming Spirit grows at the 16 percent compound annual growth rate reflected in its Five-Year Network Plan, the other ULCCs would have to collectively grow by about 171% to replace the capacity that Spirit would obtain by 2026. That would take over ten years based on historical growth rates of the other ULCCs. Nov. 21, 2023, Tr. Vol. 1, 31:9-32:9 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 17; *see also* Nov. 21, 2023, Tr. Vol. 1, 24:19-25:18 (Chipty/Pls. Expert), discussing Tr. Ex. 863 (showing historical growth rates for Spirit, Frontier, and Allegiant).

568. Besides looking at the anticipated fleet growth for ULCCs, Breeze, Southwest, and JetBlue, Dr. Hill did not do any other quantitative analysis to determine the ability of ultra low-cost carriers to fulfill their standalone network plans while also replacing the competition lost as a result of the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 133:3-134:17 (Hill/Defs. Expert), discussing Hill Direct Presentation at slide 11.

4. Other ULCCs are unlikely to restore the competition Spirit brings due to network fit concerns

569. The decision of an airline to move around aircraft and pilots from existing routes to replace capacity on routes exited by an airline, such as Spirit, must make sense with the airline's overall network strategy and fit with the availability of the airline's aircraft. *Supra* Part

II.B.

570. An airline is more likely to enter a route when it is present at both endpoints, instead of just one or neither of the endpoints. Nov. 21, 2023, Tr. Vol. 1, 51:15-23 (Chipty/Pls. Expert). Historically, ULCCs have followed the same pattern and are more likely to enter a route when they have presence at both or at least one route endpoint. Nov. 21, 2023, Tr. Vol. 1, 51:24-55:13 (Chipty/Pls. Expert) (discussing Chipty Direct Presentation at slides 29-33).

571. There are no potential ULCC entrants present on 63 percent, or 32 of the 51 presumptive nonstop overlap routes, where "potential entrant" is defined as a ULCC with service of five or more routes at both endpoints. There is one potential entrant on 15 presumptive nonstop overlaps, two potential entrants on three routes, four potential entrants on one route, and no routes with five potential entrants. Nov. 21, 2023, Tr. Vol. 1, 55:25-57:3 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 34; *see also* Tr. Ex. 875 (providing route-level detail).

572. There are no potential ULCC entrants on 153, or 50 percent, of Spirit routes. Nov. 21, 2023, Tr. Vol. 1, 57:9-57:22 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 35; *see also* Tr. Ex. 880 (providing route-level detail).

573. Allegiant is the only ULCC that is positioned to enter more than a negligible number of routes, and Frontier is the only ULCC with meaningful overlap on Spirit's routes. Nov. 21, 2023, Tr. Vol. 1, 57:4-58:16 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slides 34-36; *see also* Tr. Exs. 875, 880 (providing route-level detail).

574. Defendants' expert attempted to adapt Plaintiff's expert's analysis to predict the likelihood of ULCC entry on various categories of markets. Nov. 27, 2023, Tr. Vol. 2, 129:25-130:4 (Hill/Defs. Expert), discussing Hill Direct Presentation at slide 7. However, Dr. Hill

acknowledged that Dr. Chipty specifically warned against using her model for this purpose. Nov. 27, 2023, Tr. Vol. 2, 130:12-15 (Hill/Defs. Expert). And he admitted that this analysis does not account for recent changes to any airlines' network strategy that has taken place, such as Frontier's decision to fly more of its routes back to home bases each day. Nov. 27, 2023, Tr. Vol. 2, 130:16-131:2 (Hill/Defs. Expert); *see supra* Part II.B. Nor does his analysis account for current limitations on the availability of planes and pilots in the airline industry. Nov. 27, 2023, Tr. Vol. 2, 131:3-7 (Hill/Defs. Expert). Dr. Hill acknowledged that this analysis provides no indication as to whether entry by a ULCC would be sufficient to fully replace the competition that Spirit brings to markets where it operates. Nov. 27, 2023, Tr. Vol. 2, 131:21-132:2 (Hill/Defs. Expert). Dr. Hill concluded that, at best, there is a 40 percent likelihood that a ULCC enters a particular route in one year. Nov. 27, 2023, Tr. Vol. 2, 131:8-14 (Hill/Defs. Expert), discussing Hill Direct Presentation at slide 7.

5. Other ULCCs are not as competitive as Spirit in markets serving big cities, large leisure destinations, and in markets in which legacy airlines compete

575. Spirit overwhelmingly operates routes serving large populations. *Supra* Parts II.D.6, II.D.8; Nov. 7, 2023, Tr. Vol. 2, 123:2-8 (Kirby/Spirit) ("We want to go either where people originate, we want to offer destinations they want to go, and then often big cities are destinations as well as originations."); Nov. 21, 2023, Tr. Vol. 1, 73:20-23 (Chipty/Pls. Expert). By serving large routes, Spirit competes head-to-head with legacy carriers and has proven itself capable of competing in overlap markets. *Supra* Part II.D.6, II.D.8 (discussing Spirit's success competing with legacy carriers). More generally, Spirit's routes are competitive—approximately 85-90 percent of Spirit's routes have other airlines flying on them. Klein (Spirit) Lit. Dep. 336:22-337:17, 337:19-338:3, June 27, 2023.

576. **<u>Frontier</u>:** By contrast, Frontier offers less competition to the Big Four. When

Frontier adds a route one of the Big Four serves, it adds only a limited amount of capacity to protect itself against fare matching. Nov. 14, 2023, Tr. Vol. 1, 60:18-61:4 (Biffle/Frontier); [redacted].

577. Frontier does not over-index on large metro areas, like Spirit, and instead diversifies with a mix of small, medium, and large cities. Nov. 14, 2023, Tr. Vol. 1, 52:18-23 (Biffle/Frontier); Biffle (Frontier) Lit. Dep. 90:14-25, June 14, 2023. Frontier is also growing away from saturated domestic leisure markets like Las Vegas and Florida. Nov. 14, 2023, Tr. Vol. 1, 49:7-50:7 (Biffle/Frontier); Tr. Ex. 701 at -624.

578. **Allegiant:** Allegiant does not want to compete against other airlines. One of the pillars of Allegiant's business is to serve routes with "little competition." Nov. 14, 2023, Tr. Vol. 2, 126:24-128:9, 129:15-23 (Wells/Allegiant), discussing Tr. Ex. 10 at -105; Tr. Ex. 70 at -011. Seventy-five percent of Allegiant's routes today have no competition. Nov. 14, 2023, Tr. Vol. 2, 130:21-24 (Wells/Allegiant); *see also* Nov. 7, 2023, Tr. Vol. 2, 119:15-22 (Kirby/Spirit). And, on the routes in which there is competition, Allegiant rarely competes against legacy carriers. Nov. 15, 2023, Tr. Vol. 1, 13:17-24 (Wells/Allegiant); Tr. Ex. 70 at -007 (avoiding routes hostile to the legacies).

579. This is not going to change. The amount of competition Allegiant faces has been the same for the last five years and is expected to stay the same going forward. Nov. 15, 2023, Tr. Vol. 1, 33:13-16, 34:4-8 (Wells/Allegiant); Nov. 14, 2023, Tr. Vol. 2, 130:25-131:4 (Wells/Allegiant); Tr. Ex. 70 at -004 (highlighting potential routes with no competition). Allegiant will continue to serve underserved or unserved routes from small and midsized cities. Nov. 14, 2023, Tr. Vol. 2, 125:25-126:5, 126:16-23 (Wells/Allegiant); Nov. 21, 2023, Tr. Vol. 1, 71:21-72:17 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 47.

580. Allegiant's and Spirit's networks have limited overlap overall (eight percent) and even less on nonstop routes that meet the presumption (two percent). Nov. 21, 2023, Tr. Vol. 1, 57:23-58:16 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 36. This is at least in part because Allegiant is less likely than Spirit to have endpoints in primary airports where legacy carriers operate. Nov.7, 2023, Tr. Vol. 2, 119:8-22 (Kirby/Spirit); Kirby (Spirit) Lit. Dep. 253:4-8, May 26, 2023; *see also* Christie (Spirit) CID Dep. 163:6-164:5, Jan. 24, 2023, discussing Tr. Ex. 342 at -286 (describing, in a presentation to Spirit's Board, Allegiant's "network of 'nowhere to somewhere'" routes). Similarly, Allegiant competes with JetBlue on less than ten total routes. Nov. 14, 2023, Tr. Vol. 2, 136:18-24 (Wells/Allegiant).

581. **Avelo:** Unlike Spirit, Avelo targets routes that other carriers do not serve and provides those routes with less-frequent service. Nov. 3, 2023, Tr. Vol. 1, 9:21-10:18 (Yealy/Avelo); *see also* Nov. 8, 2023, Tr. Vol. 1, 45:13-16 (Kirby/Spirit), discussing Tr. Ex. 319 at -753 (agreeing that Avelo and Breeze have "business models [that] are designed to avoid head-to-head competition with legacy airlines").

582. Avelo expected that only seven percent of its ASMs in December 2023 would have direct nonstop competition (*i.e.*, 93 percent would have no other carrier serving the same route), reduced to only four percent of routes not touching Raleigh-Durham. Nov. 3, 2023, Tr. Vol. 1, 21:13-22:6 (Yealy/Avelo), discussing Tr. Ex. 12 at -035. Avelo started its Raleigh-Durham base in February 2023 with three routes that had direct nonstop competition to test its ability to compete but has since exited those routes. Nov. 3, 2023, Tr. Vol. 1, 20:23-21:12 (Yealy/Avelo).

583. [redacted]. Yealy

(Avelo) Lit. Dep. 104:21-107:12, June 27, 2023.

584. **Breeze:** Breeze "serve[s] a lot of markets where regional jets serve" and traditionally flies from smaller cities. Neeleman (Breeze) Lit. Dep. 55:22-56:19, 75:20-21, July 17, 2023.

585. As of September 2022, Breeze's business strategy and expansion plans were centered on adding flights on routes that do not have nonstop flights operated by another carrier. Neeleman (Breeze) Lit. Dep. 49:18-50:7, July 17, 2023, discussing Tr. Ex. 194 at -010. Over 90 percent of Breeze flights were on routes where no other carrier offered a nonstop flight. Neeleman (Breeze) Lit. Dep. 53:17-54:7, July 17, 2023, discussing Tr. Ex. 194 at -010.

586. The "vast majority" Breeze's flights— Breeze's CEO said potentially up to 93 percent—still have no nonstop competition. *Id*. at 53:17-54:7.

6. Other ULCCs do not offer the same depth of service

587. Spirit currently flies close to 14 hours per aircraft per day, Nov. 7, 2023, Tr. Vol. 2, 90:17-91:1 (Kirby/Spirit), and nearly 100 percent of routes Spirit flew in October 2023 were flown once a day or more, Nov. 8, 2023, Tr. Vol. 1, 42:2-9 (Kirby/Spirit). Other ULCCs do not utilize their aircraft as much[21] or offer the same frequency of service.

588. **Frontier:** For example, Frontier serves routes approximately 30 percent less frequently than Spirit. Nov. 14, 2023, Tr. Vol. 1, 53:3-9 (Biffle/Frontier); Nov. 21, 2023, Tr. Vol. 1, 60:13-61:10 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 39; *see also* Tr. Ex. 865.

589. **Allegiant:** "[L]ow frequency/variable capacity" is a pillar of Allegiant's business. Nov. 14, 2023, Tr. Vol. 2, 131:5-12, 131:22-132:4 (Wells/Allegiant); Tr. Ex. 10 at -105. In the

[21] Airlines with lower utilization offer less capacity. Nov. 3, 2023, Tr. Vol. 1, 30:15-22 (Yealy/Avelo).

past 12 months, Allegiant only provided daily service on roughly ten percent of the routes it serves. Nov. 14, 2023, Tr. Vol. 2, 129:6-14 (Wells/Allegiant); Nov. 15, 2023, Tr. Vol. 1, 8:12-15 (Wells/Allegiant); *see also* Nov. 14, 2023, Tr. Vol. 2, 131:22-132:4 (Wells/Allegiant); Nov. 21, 2023, Tr. Vol. 1, 72:18-73:19 (Chipty/Pls. Expert), discussing Tr. Exs. 871, 872, and 873 (comparing Spirit's and Allegiant's frequency of service).

590. In addition, Allegiant only flies its aircraft approximately six to seven hours per day, Nov. 14, 2023, Tr. Vol. 2, 125:9-13 (Wells/Allegiant); Nov. 15, 2023, Tr. Vol. 1, 19:3-5 (Wells/Allegiant), and will likely only get as high as eight hours per day, Nov. 15, 2023, Tr. Vol. 1, 19:6-14 (Wells/Allegiant).

591. **Other ULCCs:** Avelo and Sun Country utilize their aircraft similar to Allegiant. Nov. 3, 2023, Tr. Vol. 1, 30:5-14 (Yealy/Avelo). As a result, Avelo flies with "very little or low frequency on routes, generally speaking." Nov. 3, 2023, Tr. Vol. 1, 10:5-9 (Yealy/Avelo). Breeze does not operate daily service on the majority of the routes it serves. Neeleman (Breeze) Lit. Dep. 53:17-54:7, 67:2-12, July 17, 2023; *see also id.* at 226:5-9 (noting Breeze sometimes backfills with less frequency than the departing airline).

592. Besides looking at the frequency with which Spirit operates on 51 nonstop markets where the Proposed Acquisition is presumed illegal, Dr. Hill did not undertake any other analysis to understand what level of entry by another carrier would be necessary to fully replace Spirit. Nov. 27, 2023, Tr. Vol. 2, 132:11-19 (Hill/Defs. Expert).

7. Other ULCCs' "hit-and-run" approach means any competition they do bring to Spirit's routes will be less durable than competition from Spirit

593. Spirit's approach is to enter a market with the aim to stay in perpetuity. *Supra* Part II.E.3; Nov. 7, 2023, Tr. Vol. 2, 120:20-23 (Kirby/Spirit). Generally, Spirit will try to give the market at least one year to see if it is successful, Kirby (Spirit) Lit. Dep. 265:15-266:14, May 26,

2023, and makes "more [of an] effort to stick around and see if the market can grow . . . up to [Spirit's] forecast and expectations," Klein (Spirit) Lit. Dep. 332:12-333:9, June 27, 2023.

594. **<u>Other ULCCs do not stick around</u>:** By contrast, Frontier enters a lot of routes and is also not afraid to exit routes it perceives as not working. Nov. 14, 2023, Tr. Vol. 1, 76:5-10 (Biffle/Frontier); *see also* Nov. 7, 2023, Tr. Vol. 2, 117:17-118:14 (Kirby/Spirit) (discussing Frontier's history of exiting routes). Since July 2014, Frontier has grown 300 percent, but in that time period approximately 50 percent of the routes it entered did not work out. Nov. 14, 2023, Tr. Vol. 1, 61:5-22 (Biffle/Frontier); *id.* at 35:11-12 (noting that Mr. Biffle joined Frontier in July 2014). From 2014-2019, Frontier exited at more than twice the rate of Spirit; overall, Spirit exited 18 percent of the routes it entered, while Frontier exited 40 percent of the routes it entered. Nov. 21, 2023, Tr. Vol. 1, 66:15-67:1 (Chipty/Pls. Expert), discussing Tr. Ex. 866. Frontier's greater willingness to exit routes makes Frontier a less durable source of sustained competition than Spirit. Nov. 21, 2023, Tr. Vol. 1, 61:11-63:11 (Chipty/Pls. Expert).

595. Frontier has also exited high-cost airports that Spirit serves in key metropolitan areas like Newark and Los Angeles. Nov. 14, 2023, Tr. Vol. 1, 61:23-62:11 (Biffle/Frontier); Nov. 7, 2023, Tr. Vol. 2, 119:23-120:3 (Kirby/Spirit) (noting that Newark is a high-cost airport); Kirby (Spirit) CID Dep. 51:15-52:12, Jan. 13, 2023; Kirby (Spirit) Lit. Dep. 204:06-205:3, May 26, 2023 (stating his understanding that "the very high cost of Los Angeles" likely had an effect on Frontier's decision to exit LAX); *see also* Oct. 31, 2023, Tr. Vol. 2, 98:17-99:6 (Christie/Spirit), discussing Tr. Ex. 348 at -637 (noting that Frontier had trouble operating from "big city east coast strongholds like Newark and Miami" in November 2021).

596. Similarly, Allegiant's staying power on a route has historically been less than that of Spirit. Nov. 7, 2023, Tr. Vol. 2, 117:17-118:14 (Kirby/Spirit). Avelo and Breeze have limited

track records. They both are start-up airlines that only began offering service in the last two years. Nov. 3, 2023, Tr. Vol. 1, 8:19-21, 22:22-23:12 (Yealy/Avelo); Neeleman (Breeze) Lit. Dep. 38:11-38:20, 38:22-25, July 17, 2023.

8. Other ULCCs offer less service than Spirit does to Puerto Rico and international destinations

597. Spirit has been successful establishing routes to many international destinations in Mexico, Central America, the Caribbean, and South America and Puerto Rico. *Supra* Part II.D.8.

598. **Other ULCCs do not fly where Spirit does:** Frontier does not provide service to many international locations that Spirit does today, including Honduras, Aruba, and destinations in South America. Nov. 14, 2023, Tr. Vol. 1, 53:13-24 (Biffle/Frontier); Nov. 8, 2023, Tr. Vol. 1, 22:4-23:13 (Kirby/Spirit). Allegiant attempted unsuccessfully to add international service twice and previously exited Puerto Rico because it was “well served” and Allegiant’s results there “weren’t great.” Nov. 14, 2023, Tr. Vol. 2, 136:2-14 (Wells/Allegiant). Today, Allegiant does not operate any international routes or routes to Puerto Rico and has no concrete plans to independently expand to Latin America or the Caribbean. Nov. 14, 2023, Tr. Vol. 2, 135:15-136:14 (Wells/Allegiant); Nov. 15, 2023, Tr. Vol. 1, 38:2-8 (Wells/Allegiant); Nov. 8, 2023, Tr. Vol. 1, 26:15-20 (Kirby/Spirit). Instead, it plans is to “get[] [its] feet wet in international-scheduled service” through a joint venture with a Mexican-based carrier before “moving past that to other countries.” Nov. 15, 2023, Tr. Vol. 1, 38:2-8 (Wells/Allegiant). Avelo does not offer scheduled international service and [redacted]. Nov. 3, 2023, Tr. Vol. 1, 26:21-22 (Yealy/Avelo); Yealy (Avelo) Lit. Dep. 36:20-23, June 27, 2023. Breeze does not fly international routes or to any destinations in Puerto Rico. Neeleman (Breeze) Lit. Dep. 46:9-13, 223:20-224:1, July 17, 2023.

B. There Are Significant Barriers To Entry Such That New Entry Or Expansion In The Relevant Markets Cannot Replace Lost Competition From Spirit

599. Limited access to infrastructure like gates, slots, runway timings, and international landing timings has been shown to deter airline entry and increase fares. Nov. 21, 2023, Tr. Vol. 1, 40:2-21 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 22.

600. As discussed *infra,* there are barriers to entry or expansion on Spirit's routes preventing other ULCCs from achieving the scale necessary to replace the lost competition; these include airport gates and infrastructure (*infra* Part VII.B.1), slots and landing authorizations (*infra* Part VII.B.2), and international-specific permissions (*infra* Part VII.B.3).

1. Need for gate access and other airport real estate (*i.e.*, ticket counters, baggage areas, office space, *etc.*), including in severely constrained airports

601. Airlines need access to gates and other infrastructure to operate their routes. Nov. 3, 2023, Tr. Vol. 1, 11:21–12:23 (Yealy/Avelo); Gale (BCAD) Lit. Dep. 158:4-21, June 14, 2023 (discussing the need for "[t]icket counters, baggage service office, airline ticket offices, [and] operations support space"). Infrastructure, such as gates, is hard to come by in many of the large, primary airports Spirit serves. Nov. 7, 2023, Tr. Vol. 2, 118:15-20, 124:19-124:25 (Kirby/Spirit); Kirby (Spirit) Lit. Dep. 229:17-23, 230:2-4, 230:18-232:1, May 26, 2023; Tr. Ex. 331 at -226.

602. Having limited gates at these airports constrains Spirit's, and other ULCCs', ability to grow. Nov. 8, 2023, Tr. Vol. 1, 17:11-24 (Kirby/Spirit); Nov. 3, 2023, Tr. Vol. 1, 11:21–12:9, 16:12–17:6 (Yealy/Avelo); Nov. 14, 2023, Tr. Vol. 1, 59:11-59:16 (Biffle/Frontier); Kirby (Spirit) Lit. Dep. 232:2-8, May 26, 2023. Access to gates is one of the biggest growth constraints that JetBlue faces as well. Friedman 30(b)(6) Lit. Dep. 146:19-24, June 22, 2023.

603. Gates are often constrained at airports serving the largest metro areas, in large part because there are usually larger airlines that control most of the gates. These airports are commonly called "fortress hubs." Nov. 14, 2023, Tr. Vol. 1, 59:17-60:9 (Biffle/Frontier); Nov. 3,

2023, Tr. Vol. 1, 17:7-13 (Yealy/Avelo). For example, JetBlue has had difficulty growing beyond five flights per day at Chicago's O'Hare International Airport ("ORD"), a hub for American and United, Nov. 2, 2023, Tr. Vol. 1, 60:8-18 (Clark/JetBlue), and has also had difficulty growing at Houston's George Bush Intercontinental Airport ("IAH"), a hub for United. Nov. 2, 2023, Tr. Vol. 1, 60:19-61:4, 61:12-62:2 (Clark/JetBlue).

604. According to Spirit's Network Planning Group, many of the top 26 metro areas in the United States, including those served by Spirit, are constrained. Kirby (Spirit) Lit. Dep. 230:18-232:1, May 26, 2023, discussing Tr. Ex. 331 at -226.

605. In particular, gates are constrained at the following airports: **Hartsfield-Jackson Atlanta International Airport ("Atlanta" or "ATL")** (Nov. 14, 2023, Tr. Vol. 1, 59:20-23 (Biffle/Frontier); Kirby (Spirit) Lit. Dep. 129:13-130:15, May 26, 2023); **Boston Logan International Airport ("Boston," "Boston Logan," or "BOS")** ([redacted]; Tr. Ex. 404 at -869); **Charlotte Douglas International Airport ("Charlotte" or "CLT")** (Kirby (Spirit) Lit. Dep. 233:14-23, May 26, 2023); Chicago's **Midway International Airport ("MDW") and O'Hare International Airport ("ORD")** (Kirby (Spirit) Lit. Dep. 238:10-16, May 26, 2023; Yealy (Avelo) Lit. Dep. 91:14-92:12, June 27, 2023); **Dallas/Fort Worth International Airport ("Dallas" or "DFW")** (Nov. 8, 2023, Tr. Vol. 1, 16:12-16 (Kirby/Spirit); Nov. 14, 2023, Tr. Vol. 1, 59:20-23 (Biffle/Frontier)); **Detroit Metropolitan Airport ("Detroit" or "DTW")** (Nov. 8, 2023, Tr. Vol. 1, 16:17-19 (Kirby/Spirit)); **Southwest Florida International Airport ("Fort Myers" or "RSW")** (Nov. 3, 2023, Tr. Vol. 1, 16:12-17:6 (Yealy/Avelo)); Houston's **George Bush Intercontinental Airport ("IAH") and William P. Hobby Airport ("HOU")** (Nov. 8, 2023, Tr. Vol. 1, 16:20-23 (Kirby/Spirit) (noting IAH); Kirby (Spirit) Lit. Dep. 230:18-232:1, May 26,

2023 (noting IAH and "Hobby" (HOU) as constrained); **Los Angeles International Airport ("LAX")** (Kirby (Spirit) Lit. Dep. 236:2-12, May 26, 2023; Friedman 30(b)(6) Lit. Dep. 146:19-147:3, June 22, 2023; Tr. Ex. 404 at -869); **Miami International Airport ("Miami" or "MIA") and Fort Lauderdale-Hollywood International Airport ("Fort Lauderdale" or "FLL")** (Nov. 3, Tr. Vol. 1, 13:20-14:10 (Yealy/Avelo); Kirby (Spirit) Lit. Dep. 237:16-235:4, May 26, 2023; Wells (Allegiant) Lit. Dep. 79:10-13, June 22, 2023; Nov. 3, 2023, Tr. Vol. 1, 13:20-14:10 (Yealy/Avelo); Tr. Ex. 404 at -869; Friedman (JetBlue) 30(b)(6) Lit. Dep. 147:12-16, June 22, 2023); **Minneapolis-Saint Paul International Airport ("Minneapolis" or "MSP")** (Kirby (Spirit) Lit. Dep. 238:8-9, May 26, 2023); the New York City metropolitan area's: **LaGuardia Airport ("LaGuardia" or "LGA"), Newark Liberty International Airport ("Newark" or "EWR"), and John F. Kennedy International Airport ("JFK")** (Klein (Spirit) Lit. Dep. 233:18-234:6, 234:8-10, 234:12-22, 235:2-6, 235:8, June 27, 2023; Friedman 30(b)(6) Lit. Dep. 147:22-148:8, June 22, 2023; Hurley (JetBlue) Lit. Dep. 52:24-53:2, June 21, 2023; Tr. Ex. 404 at -869).

606. Other non-gate facilities, such as ticket counters, are constrained in San Juan, Puerto Rico's Luis Muñoz Marín International Airport ("San Juan" or "SJU"). Kirby (Spirit) Lit. Dep. 238:17-25, May 26, 2023.

2. Need for peak landing times/slots at Level 2 and Level 3 airports

607. **Level 3 Airports:** The FAA regulates landing and takeoff "slots" at so-called Level 3 airports, which include DCA, LGA, and JFK. Airlines must hold these slots in order to arrive or depart at these airports. Nov. 8, 2023, Tr. Vol. 1, 32:24-34:12 (Kirby/Spirit); *see also* Nov. 3, 2023, Tr. Vol. 1, 15:4-17 (Yealy/Avelo); Nov. 6, 2023, Tr. Vol. 2, 109:10-18 (Hayes/JetBlue).

608. The lack of available slots constrains entry and expansion at DCA, LGA, and

JFK. Hurley (JetBlue) Lit. Dep. 52:14-23, June 21, 2023 (describing JFK, LGA, EWR, and DCA as slot constrained); Kirby (Spirit) Lit. Dep. 236:18-21, May 26, 2023 (testifying that no slots are available at LGA); Biffle (Frontier) Lit. Dep. 56:18-57:12, June 14, 2023 (stating that there are no slots available at LGA or JFK).

609. Slot-controlled airports are the most difficult to enter. Nov. 3, 2023, Tr. Vol. 1, 13:20-14:10 (Yealy/Avelo). Generally, the only way to gain access to slots would be to "acquire them from another airline." Nov. 3, 2023, Tr. Vol. 1, 15:18-23 (Yealy/Avelo).

610. **Level 2 Airports:** A Level 2 airport is a "schedule . . . coordinated" airport, meaning that the FAA coordinates schedules at these airports and will review airlines' submitted schedules, determine whether there will be operating challenges, and often suggest adjustments to airlines' schedules. Nov. 8, 2023, Tr. Vol. 1, 32:24-34:12 (Kirby/Spirit). Level 2 airports include EWR, ORD, LAX, and San Francisco International Airport ("SFO"). Kirby (Spirit) Lit. Dep. 157:23-158:19, May 26, 2023.

611. Growth at Newark during peak hours is currently limited as all peak-hour landing times have been allotted to airlines. Kirby (Spirit) Lit. Dep. 234:10-22, May 26, 2023. Obtaining landing positions — or "timings"—at Newark can be a difficult process. Christie (Spirit) Lit. Dep. 355:8-16, June 19, 2023. In fact, Spirit had to sue for the opportunity to apply for peak-landing-time authorizations at Newark when Southwest relinquished them. Tr. Ex. 221 at -209-210.

3. Slots and facilities needed to provide international service are constrained

612. **International slots:** Many international airports have prescribed landing and take-off times for foreign carriers. Nov. 8, 2023, Tr. Vol. 1, 21:19-24 (Kirby/Spirit). There are very few international airports that do not have some level of slot control for foreign carriers. Kirby (Spirit) Lit. Dep. 49:8-24, May 26, 2023.

613. Any airline, including JetBlue, seeking to replicate Spirit's international portfolio would need the landing rights (or their equivalent) that Spirit has obtained in these international destinations. Kirby (Spirit) Lit. Dep. 99:24-100:5, 100:7-15, May 26, 2023.

614. The lack of available slots can limit entry and expansion. *See, e.g.*, Biffle (Frontier) Lit. Dep. 56:18-57:12, June 14, 2023. Certain international airports that Spirit operates out of are slot-constrained during peak times, including Bogota, Colombia's El Dorado International Airport ("Bogota" or "BOG"), Cancun International Airport ("Cancun" or "CUN"), Aruba International Airport ("Aruba" or "AUA"), and Ramon Villeda International Airport in Honduras ("SAP"). Nov. 8, 2023, Tr. Vol. 1, 22:8-23:6 (Kirby/Spirit).

615. **International landing rights at FLL:** At some domestic airports, like FLL, airlines must apply for international landing rights, which allocate specific time slots for inbound international arrivals. Kirby (Spirit) Lit. Dep. 85:10-21, May 26, 2023. Airlines must apply for these rights twice per year with the Broward County Aviation Department ("BCAD") and U.S. Customs and Border Protection ("CBP"). *Id.* at 85:10-24. CBP has historically denied applications, including those from Spirit, because CBP cannot support the throughput at the particular time requested. *Id.* at 85:25-86:13.

616. JetBlue has faced similar limitations at FLL with regards to scheduling international arrivals to ensure gate availability and has sought relief from the airport authority. Nov. 2, 2023, Tr. Vol. 2, 166:18-167:13 (Clark/JetBlue).

617. FLL's landing rights favor pre-existing carriers. FLL offers "grandfathering privileges" such that a carrier which has, historically, flown internationally can retain its international landing rights. Kirby (Spirit) Lit. Dep. 87:10-15, May 26, 2023.

618. **International gates:** Separate from landing rights, Spirit has also faced

challenges accessing the required international gates at FLL. Kirby (Spirit) Lit. Dep. 74:25-75:12, 84:17-85:4, 108:22-109:3, May 26, 2023.

619. At times, MCO has also had insufficient customs and immigration facilities to allow carriers to expand service. Jaramillo (GOAA) Lit. Dep. 30:11-24, June 23, 2023.

C. The Proposed Divestitures Do Not Restore The Competition Lost As A Result Of The Proposed Acquisition

620. JetBlue proposes to divest certain assets at Fort Lauderdale, Newark, and Boston to Allegiant, and also certain assets at LaGuardia to Frontier. Nov. 6, 2023, Tr. Vol. 2, 119:2-7, 120:9-122:3 (Hayes/JetBlue); *see generally* Tr. Ex. 360 ("Frontier Divestiture Agreement") and Tr. Ex. 246 ("Allegiant Divestiture Agreement") (collectively the "Divestiture Agreements").

621. **Allegiant Divestiture Agreement:** Specifically, the Allegiant Divestiture Agreement involves the transfer of (i) five of JetBlue's gates and related ground facilities at Fort Lauderdale for [redacted], Nov. 6, 2023, Tr. Vol. 2, 120:9-121:5 (Hayes/JetBlue); Nov. 14, 2023, Tr. Vol. 2, 146:16-20 (Wells/Allegiant); Tr. Ex. 246 at -890, -892, -915; (ii) two gates in Terminal B, Spirit's operating authorizations, and related ground facilities at Newark for [redacted], Tr. Ex. 246 at -890, -892 -915, -917-18; Land (JetBlue) 30(b)(6) Lit. Dep. 25:6-11 (referencing gates), 27:13-16 (referencing ground facilities), 27:17-21 (referencing operating authorizations), June 23, 2023; and (iii) two gates and related ground facilities at Boston for [redacted], Nov. 14, 2023, Tr. Vol. 2, 140:19-22 (Wells/Allegiant); Tr. Ex. 246 at -890, -892, -915-16.

622. **Frontier Divestiture Agreement:** Under the Frontier Divestiture Agreement, JetBlue plans to sell Spirit's LaGuardia assets, including Spirit's six gates in Terminal B (also known as the Marine Air Terminal or "MAT"), Spirit's takeoff and landing slots, and ground facilities, to Frontier for [redacted]. Nov. 14, 2023, Tr. Vol. 1, 62:12-18 (Biffle/Frontier); Tr.

Ex. 360 at -764; Land (JetBlue) 30(b)(6) Lit. Dep. 35:11-14, June 23, 2023; Land (JetBlue) 30(b)(6) Lit. Dep. 36:22-24, 38:24-39:7 (referencing gates), 40:10-20 (referencing slots), June 23, 2023; Tr. Ex. 360 at -761, -787-789.

623. As described below, these purported divestitures will not restore the competition lost by the elimination of an independent Spirit because (i) they are facially insufficient (*infra* Part VII.C.1), (ii) Allegiant and Frontier are unlikely to fully restore the competition Spirit brings using the divested assets (*infra* Part VII.C.2-3), and (iii) the need to obtain third-party approvals makes their ultimate effectuation uncertain (*infra* Part VII.C.4).

1. The Divestiture Agreements are facially insufficient

624. **<u>The Divesture Agreements do not cover airports on all affected routes</u>:** The Divestiture Agreements do not address the operational barriers on 73.5 percent of Spirit routes, accounting for about 60 percent of all Spirit ASMs. Nov. 21, 2023, Tr. Vol. 1, 47:7-48:9 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 26. About 30 percent of the nonstop overlap routes for which the Proposed Acquisition is presumptively illegal involve airports that are not subject to the Divestiture Agreements. *Id.*

625. **<u>The Divesture Agreements do not include a commitment to replace Spirit's capacity on all affected routes</u>:** The Divestiture Agreements do not require Allegiant and Frontier to maintain a particular level of service from Fort Lauderdale, Newark, Boston, or New York City or to provide any service on Spirit's routes. Nov. 14, 2023, Tr. Vol. 2, 144:9-15 (Wells/Allegiant); Nov. 14, 2023, Tr. Vol. 1, 63:21-24 (Biffle/Frontier); Biffle (Frontier) Lit. Dep. 109:4-14, June 14, 2023; Land (JetBlue) Lit. Private Plaintiffs Dep. 7:8-9:4, June 23, 2023; *see generally* Tr. Exs. 246, 360.

626. **<u>The Divesture Agreements do not include all of the inputs necessary to compete</u>:** The Divestiture Agreements only pertain to airport-level assets and do not provide

Allegiant and Frontier with, for example, additional aircraft or pilots to effectively use the Newark, Fort Lauderdale, Boston, and LaGuardia assets at issue. Nov. 6, 2023, Tr. Vol. 2, 127:18-24 (Hayes/JetBlue); Nov. 14, 2023, Tr. Vol. 2, 140:19-141:3 (Wells/Allegiant); Nov. 14, 2023, Tr. Vol. 1, 62:19-63:1 (Biffle/Frontier); *see generally* Tr. Exs. 246, 360.

2. Allegiant would not restore competition in the scheduled air passenger service market in the relevant geographic markets

627. **Allegiant might not be able to use all of the divested assets:** Allegiant might not be able to use all of the runway authorizations it is attempting to acquire at Newark because some of "the earliest time slots are a challenge" for Allegiant, which does not have aircraft or crew based in Newark. Nov. 14, 2023, Tr. Vol. 2, 145:12-19 (Wells/Allegiant).

628. **Allegiant has no specific plans to replace Spirit:** Allegiant has no specific plans for how it will use the gates at Boston, Newark, or Fort Lauderdale, Nov. 14, 2023, Tr. Vol. 2, 144:22-145:7, 146:12-15, 148:23-149:2 (Wells/Allegiant), and will not change its strategy for selecting routes to enter as a result of acquiring the divestiture assets, Nov. 15, 2023, Tr. Vol. 1, 40:7-21 (Wells/Allegiant).

629. Allegiant recognized that JetBlue was using the divestiture process to "select their competitors in key airports," Tr. Ex. 700 at -009, and expressed to its Board of directors that Allegiant would be a "great counterparty," Tr. Ex. 7 at -456. This is because, "if [JetBlue] were relying on [Allegiant's] historic network," it could be "under the belief that [Allegiant] would not necessarily look to -- to backfill or compete." Wells (Allegiant) Lit. Dep. 121:7-23; 121:25-122:4, June 22, 2023.

630. **Spirit and Allegiant serve different destinations out of New York City, Boston, and Miami:** As discussed *supra* Part VII.A.8, Allegiant does not fly internationally or to Puerto Rico. Spirit serves international destinations out of FLL and serves destinations in

Puerto Rico out of FLL, EWR, and BOS. *See* Nov. 7, 2023, Tr. Vol. 2, 97:16-21 (referencing the BOS-SJU route), 111:15-112:3 (referencing NYC-SJU routes, including those out of EWR), 112:11-18 (referencing Miami-SJU routes, including those out of FLL), discussing Kirby Demonstrative 2; *supra* Part II.D.8.

631. As discussed *supra* Part VII.A.5, Allegiant serves unserved or underserved markets. Allegiant has the same strategy in Miami, Nork York City, and Boston today. Nov. 14, 2023, Tr. Vol. 2, 141:11-143:5 (discussing Wells Demonstrative A), 147:17-148:13 (discussing Wells Demonstrative B), 145:20-146:8 (discussing Wells Demonstrative C) (Wells/Allegiant); Nov. 15, 2023, Tr. Vol. 1, 33:13-16, 34:4-8 (Wells/Allegiant); Nov. 21, 2023, Tr. Vol. 1, 71:21-73:19 (Chipty/Pls. Expert), discussing Tr. Exs. 868, 869, and 870; Wells (Allegiant) Lit. Dep. 101:14-19, 102:8-104:9, 104:12-105:6, 105:9-16, 110:1-111:9, 111:12-15, June 22, 2023.

632. As a result, today, Allegiant and Spirit do not have any overlapping routes out of New York City or Boston, and Allegiant has very limited overlap with Spirit out of Fort Lauderdale (and the greater Miami area). Nov. 21, 2023, Tr. Vol. 1, 71:21-73:19 (Chipty/Pls. Expert), discussing Tr. Exs. 868, 869, and 870.

633. **Allegiant offers less frequent service:** As discussed *supra* Part VII.A.6, Allegiant flies routes at lower frequency than Spirit. Allegiant tends to fly at a lower frequency than Spirit out of New York City, Boston, and Miami. Nov. 21, 2023, Tr. Vol. 1, 72:18-73:19 (Chipty/Pls. Expert), discussing Tr. Exs. 871, 872 and 873.

3. Frontier would not restore competition in the scheduled air passenger service market in the relevant geographic markets

634. **The perimeter rule limits Frontier's use of the LaGuardia assets:** Frontier cannot serve certain Spirit routes from New York City out of LaGuardia using the divested assets because of the perimeter rule. The perimeter rule limits the stage length (distance) that a carrier

can fly from LaGuardia to 1500 miles except on Saturdays and to Denver. Nov. 8, 2023, Vol. 2, 100:10-16 (Kirby/Spirit); Nov. 21, 2023, Tr. Vol. 1, 43:8-11 (Chipty/Pls. Expert). From the third quarter of 2021 to the second quarter of 2022, five of the routes Spirit flew out of New York City (two of which, NYC-SJU and NYC-Las Vegas, are nonstop overlap routes that are presumed illegal) would trigger the perimeter rule out of LGA. Nov. 21, 2023, Tr. Vol. 1, 42:25-44:16 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 24.

635. Spirit serves these five routes out of Newark (EWR), which is not subject to the perimeter rule. Nov. 21, 2023, Tr. Vol. 1, 44:18-45:1 (Chipty/Pls. Expert). Frontier does not currently fly out of EWR nor does it fly out of JFK, the other airport serving New York City that is not subject to the perimeter rule. Nov. 21, 2023, Tr. Vol 1, 44:17-45:1 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 24; Biffle (Frontier) Lit. Dep. 105:22-106:2, June 14, 2023.

636. **Frontier has no concrete plans to replace Spirit out of New York City and is altering its plans to grow elsewhere:** Frontier has not started any concrete route planning for the LGA assets and does not plan to until the Proposed Acquisition is completed. Nov. 14, 2023, Tr. Vol. 1, 63:25-64:22 (Biffle/Frontier); Biffle (Frontier) Lit. Dep. 109:13-15, 109:18-24, 110:24-111:18, 111:20-21, June 14, 2023.

637. Frontier would have used the new planes it intends to use to fly routes out of LaGuardia to support other planned growth. Nov. 14, 2023, Tr. Vol. 2, 113:5-14 (Biffle/Frontier).

638. **Spirit is a bigger and more durable competitor than Frontier in New York City:** As discussed *supra* Part VII.A.6, Spirit flies more frequently than Frontier, on average. Spirit flies around two to three times more frequently than Frontier does out of New York City.

Nov. 21, 2023, Tr. Vol. 1, 59:18-60:12 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 38; Tr. Ex. 864.

639. As discussed *supra* Part VII.A.3, it will take Frontier five to eight years to replace Spirit's network. It would take Frontier "a long time" to replace Spirit's capacity out of New York City. Nov. 21, 2023, Tr. Vol. 1, 67:2-15 (Chipty/Pls. Expert), discussing demonstrative slide 45; Tr. Ex. 867 (illustrating the growth required for Frontier to offset harm on all routes out of New York City, as well as Boston and Miami).

640. As discussed *supra* Part VII.A.7, Frontier frequently exits routes. And, Frontier previously exited EWR entirely. Nov. 14, 2023, Tr. Vol. 1, 61:23-62:8 (Biffle/Frontier).

4. JetBlue's ability to divest the assets is uncertain and subject to third-party approvals

641. As described below, JetBlue's ability to effectuate the transfer of the gates, operating authorizations, and slots is uncertain because third-party approvals from airport authorities and federal agencies is required. Allegiant reduced its offer for the divestiture assets it pursued due to this uncertainty. Nov. 14, 2023, Tr. Vol. 2, 140:8-18 (Wells/Allegiant); Wells (Allegiant) Lit. Dep. 126:14-128:12, 249:19-24, 250:1-2, June 22, 2023.

642. **Airport gates:** Consent of the relevant airport authority is necessary to transfer the divested gates at Fort Lauderdale (BCAD), Newark and LaGuardia (Port Authority of New York and New Jersey ("PANYNJ")), and Boston (Massachusetts Port Authority ("MassPort")). Nov. 15, 2023, Tr. Vol. 1, 46:4-47:6; 52:5-53:14 (BCAD/Gale), discussing Tr. Ex. 782 at -348; Nov. 14, 2023, Tr. Vol. 2, 139:3-11 (Wells/Allegiant); Nov. 14, 2023, Tr. Vol. 1, 63:2-7 (Biffle/Frontier); Land (JetBlue) 30(b)(6) Dep. 21:22-24, 22:5-8, 34:2-6, 41:17-20, June 23, 2023.

643. Consent of the relevant airport authority is also a closing condition of the

Divestiture Agreements and has not yet been obtained. Nov. 14, 2023, Tr. Vol. 2, 139:12-14 (Wells/Allegiant); Nov. 14, 2023, Tr. Vol. 1, 63:17-20 (Biffle/Frontier); Nov. 6, 2023, Tr. Vol. 2, 128:25-129:4 (Hayes/JetBlue); Tr. Ex. 360 at -762, -772, -786; Tr. 246 at -901, -914.

644. For Fort Lauderdale, in particular, BCAD, the actual owner of the gates, will not consent to JetBlue's request to transfer or sublease the gates to Allegiant, per BCAD's current policy and agreement with the Federal Aviation Administration ("FAA"). Nov. 15, 2023, Tr. Vol. 1, 46:4-15, 61:7-62:1 (BCAD/Gale). Rather, under BCAD's Competition Plan and agreement with the FAA, after JetBlue relinquishes the gates and other Fort Lauderdale assets to BCAD, the availability of the gates will be advertised for any interested airline "so that other potential airlines that might have an interest in serving [Fort Lauderdale] would be aware of these gates." Nov. 15, 2023, Tr. Vol. 1, 57:22-58:10, 59:12-21, 60:8-61:2 (Gale/BCAD); *see also* Gale (BCAD) Lit. Dep. 155:21-25, 156:2-8, June 14, 2023. Mark Gale, the CEO and Director of Aviation at BCAD, acknowledged that the gates could be awarded to a legacy carrier such as American, Delta, or United, instead of Allegiant or another ULCC. Nov. 15, 2023, Tr. Vol. 1, 67:4-23 (BCAD/Gale/BCAD); *see also* Gale (BCAD) Lit. Dep. 72:4-73:6, June 14, 2023.

645. The fact that JetBlue and Allegiant entered into an agreement in which Allegiant would purportedly acquire JetBlue's leased FLL assets is not relevant to Mr. Gale's decision as to which airline would be awarded the gates at issue should they be relinquished by JetBlue. Nov. 15, 2023, Tr. Vol. 1, 67:24-68:7 (Gale/BCAD).

646. For LaGuardia, the Frontier Divestiture Agreement contains an additional condition that Spirit must have entered a new lease with PANYNJ for the Marine Air Terminal. Tr. Ex. 360 at -773; Land (JetBlue) 30(b)(6) Lit. Dep. 43:6-10, June 23, 2023. [redacted] Land (JetBlue) 30(b)(6) Lit. Dep. 43:11-16, June

23, 2023.

647. **Operating authorizations:** The Newark operating authorizations to be acquired by Allegiant are "not transferrable," per FAA order. Nov. 8, 2023, Tr. Vol. 1, 36:12-18 (Kirby/Spirit); Tr. Ex. 221 at -217-18; *see also* Land (JetBlue) 30(b)(6) Lit. Dep. 32:21-33:11, 33:15-25, June 23, 2023.

648. Nonetheless, FAA consent to the transfer is a closing condition of Allegiant Divestiture Agreement. Nov. 14, 2023, Tr. Vol. 2, 139:18-140:5 (Wells/Allegiant); Tr. 246 at -901, -914; Land (JetBlue) 30(b)(6) Lit. Dep. 28:7-16, June 23, 2023. Neither JetBlue nor Allegiant has obtained the FAA's consent. Nov. 14, 2023, Tr. Vol. 2, 140:2-7 (Wells/Allegiant); Land (JetBlue) 30(b)(6) Lit. Dep. 28:17-29:15, June 23, 2023.

649. **Slots:** Consent of the FAA/DOT for transfer of Spirit's slots at LaGuardia is both necessary and a closing condition of the Frontier Divestiture Agreement. Nov. 14, 2023, Tr. Vol. 1, 63:2-7 (Biffle/Frontier); Tr. Ex. 360 at -762, -772 and -786; Land (JetBlue) 30(b)(6) Lit. Dep 41:4-8, June 23, 2023. Frontier has not reached out to the FAA/DOT for its consent. Nov. 14, 2023, Tr. Vol. 1, 63:14-16 (Biffle/Frontier).

5. Defendants' expert did not conclude that the divestitures to Allegiant and Frontier would restore competition in the scheduled air passenger service market in the relevant geographic markets

650. Dr. Hill did not offer an opinion that the divestiture buyers should be assigned market shares in any particular market. Nov. 27, 2023, Tr. Vol. 2, 128:22-25 (Hill/Defs. Expert).

651. Dr. Hill did not offer an opinion that Allegiant or Frontier will fly on any particular route or set of routes as a result of purchasing the divestiture assets. Nov. 27, 2023, Tr. Vol. 2, 129:4-7 (Hill/Defs. Expert).

652. Dr. Hill cannot rule out the possibility that neither Allegiant nor Frontier will enter any of the nonstop presumption routes that touch a divestiture airport. Nov. 27, 2023, Tr.

Vol. 2, 129:8-13 (Hill/Defs. Expert).

653. Dr. Hill did not point to evidence that Frontier or Allegiant will plan to operate on the same routes that Spirit serves today out of the divestiture airports. Nov. 27, 2023, Tr. Vol. 2, 129:14-22 (Hill/Defs. Expert).

654. A comparison between the Proposed Acquisition and the American Airlines-U.S. Airways transaction, which Dr. Hill attempted to make, is inapt and uninformative. Nov. 21, 2023, Tr. Vol. 1, 48:10-50:12 (Chipty/Pls. Expert). The American Airlines-U.S. Airways transaction involved the acquisition of one legacy hub-and-spoke carrier by another and the Proposed Acquisition between JetBlue and Spirit involves an entirely different type of carrier. *Id.* at 48:10-50:5. In addition, the American Airlines-U.S. Airways transaction involved overlap on nonstop overlapping routes of five percent and the Proposed Acquisition involves 30 to 40 percent overlap on nonstop routes. *Id.*, discussing Chipty Direct Presentation at slide 27.

655. With regards to the American Airlines-U.S. Airways transaction, Dr. Hill did not study how divestitures at DCA affected fares on any particular market with an endpoint at the airport. Nov. 27, 2023, Tr. Vol. 2, 139:7-9 (Hill/Defs. Expert).

D. Defendants' Purported Efficiencies Are Neither Verifiable Nor Merger-Specific And Cannot Rebut The Presumption Of Harm

1. Defendants have not shown that most consumers value the JetBlue product more than the Spirit product

656. As discussed *supra* Part VI.A.1, during the deal-modeling phase of the Proposed Acquisition, JetBlue calculated a "customer service premium" revenue synergy that applied a 2: revenue premium that JetBlue believed customers would willing to pay over and above Spirit's fares for JetBlue's onboard entertainment (including free live T.V. and Wi-Fi), loyalty programs, credit card partnerships, and global reach. Nov. 2, 2023, Tr. Vol. 1, 77:2-78:20 (Clark/JetBlue), discussing Tr. Ex. 656 at -931; Friedman (JetBlue) CID Dep. 42:5-43:8, January 20, 2023.

However, JetBlue has not undertaken any quantitative analysis to verify how many customers would be willing to pay more for the JetBlue product as compared to the Spirit product. Nov. 2, 2023, Tr. Vol. 1, 78:24-79:12 (Clark/JetBlue).

657. JetBlue ordinary course documents demonstrate that many consumers do not place much, if any, incremental value on the JetBlue product versus the Spirit product. In an August 2020 email, Dave Clark offered a “major hypothesis” that JetBlue had an “extremely difficult time” charging price sensitive customers more for the JetBlue product as compared to the Spirit product. Nov. 2, 2023, Tr. Vol. 1, 80:6-81:10 (Clark/JetBlue), discussing Tr. Ex. 657 at -398. As a result, Clark suggested that JetBlue should “strip down Blue Basic to make it as close as possible to the Spirit unbundled fare and the United Basic Economy.” Nov. 2, 2023, Tr. Vol. 1, 80:6-81:10 (Clark/JetBlue), discussing Tr. Ex. 657 at -398.

658. More recently, in a January 3, 2022 email regarding an ongoing JetBlue strategy review, Dave Clark expressed concern that “only a minority of customers may actually be willing to pay even just a bit more for JetBlue’s product offering.” Nov. 2, 2023, Tr. Vol. 1, 83:15-20 (Clark/JetBlue), discussing Tr. Ex. 658 at -841. Mr. Clark specifically identified customers who purchase Blue Basic fares as customers who may not be willing to pay even just a bit more for JetBlue’s product offering. Nov. 2, 2023, Tr. Vol. 1, 83:21-84:10 (Clark/JetBlue), discussing Tr. Ex. 658 at -841.

659. Empirical evidence indicates that at least some consumers prefer Spirit even when it is more expensive than JetBlue. An analysis of customers’ booking behavior in the unusual circumstance in which Spirit was more expensive than JetBlue for a particular itinerary found that almost the same number of passengers chose Spirit as chose Blue Basic. Nov. 20, 2023, Tr. Vol. 1, 18:14-19:23 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 822. This analysis

demonstrates that a substantial number of customers prefer Spirit to Blue Basic; customers would lose that preferred choice in the event of the Proposed Acquisition. Nov. 20, 2023, Tr. Vol. 1, 19:24-20:10 (Gowrisankaran/Pls. Expert).

660. Consumer purchasing behavior on Spirit also reveals that many consumers do not place much value on purportedly "higher quality" product amenities. For example, only five to thirteen percent of Spirit customers purchase Wi-Fi, with Spirit finding that the top reason for not purchasing being consumers' lack of need or desire for it. Nov. 17, 2023, Tr. Vol. 1, 54:12-25 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 12; *see also* Tr. Ex. 812. Also, despite offering exit row seats with more legroom for only $6 to $15 more than standard seats, these seats go unsold on about half of Spirit's flights. Nov. 17, 2023, Tr. Vol. 1, 55:1-14 (Gowrisankaran/Pls. Expert). The same is true for Spirit's Big Front Seat, which is wider and has more leg room for about $34 to $43 more than the standard seat. *Id.*

661. A sensitivity of Dr. Gowrisankaran's net harm model analysis, accounting for ancillary products and services that consumers purchase on domestic airlines, found very consistent aggregate net harm to his original findings. Nov. 17, 2023, Tr. Vol. 2, 151:1-11 (Gowrisankaran/Pls. Expert). This confirms that including such purchases does not materially change the conclusion that consumers will be significantly harmed by the Proposed Acquisition. Nov. 17, 2023, Tr. Vol. 2, 151:1-11 (Gowrisankaran/Pls. Expert). Dr. Hill did not use this produced ticket data to run a sensitivity of his own model. Nov. 27, 2023, Tr. Vol. 2, 113:11-114:5 (Hill/Defs. Expert). Dr. Hill's entry intensity model does not otherwise account for product quality. Nov. 27, 2023, Tr. Vol. 2, 155:11-13 (Hill/Defs. Expert).

662. Defendants' expert, Dr. Hill, acknowledged that he did not undertake any empirical analysis to understand how much consumers value any of the individual JetBlue

product amenities—including legroom, Wi-Fi, refreshments, seatback screens, or USB ports—that he mentioned during his testimony. Nov. 27, 2023, Tr. Vol. 2, 114:6-10 (Hill). Indeed, Dr. Hill agreed that some consumers may place no value on the product amenities and services that JetBlue includes in its bundled fare. Nov. 27, 2023, Tr. Vol. 2, 114:6-14. (Hill/Defs. Expert).

663. For example, Dr. Hill did not analyze whether a single parent traveling with children on Spirit today might prefer to pack snacks from home rather than pay a higher fare to fly on JetBlue. Nov. 27, 2023, Tr. Vol. 2, 114:15-19 (Hill/Defs. Expert). Dr. Hill did not know whether such a person would place any value on access to the JetBlue loyalty program that could result from the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 114:20-23 (Hill/Defs. Expert). Similarly, Dr. Hill also did not know whether a Spirit customer that does not buy ancillary products would place any value on JetBlue's seat-back entertainment. Nov. 27, 2023, Tr. Vol. 2, 114:24-115:3 (Hill/Defs. Expert). Dr. Hill also did not analyze whether a Spirit customer would value JetBlue's increased relevance after the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 115:4-7 (Hill/Defs. Expert). Dr. Hill also did not analyze whether someone flying Spirit today to visit family in Bogota, Colombia would place any value on an enhanced JetBlue credit card partnership resulting from the Proposed Acquisition. Nov. 27, 2023, Tr. Vol. 2, 115:8-11 (Hill/Defs. Expert).

664. Dr. Hill also agreed that airline passengers value getting to their destinations on time, but he did not study how JetBlue and Spirit compare in terms of on-time performance and canceled flights. Nov. 27, 2023, Tr. Vol. 2, 115:16-25 (Hill/Defs. Expert).

2. Defendants' quantification of the purported consumer benefit of converting Spirit planes to JetBlue planes is unreliable

665. Defendants' expert, Dr. Hill, did not provide an estimate of any purported consumer benefits in markets where both JetBlue and Spirit provide nonstop service today. Nov.

27, 2023, Tr. Vol. 2, 106:8-11 (Hill/Defs. Expert). Instead, Dr. Hill only calculated purported consumer benefits on routes in which Spirit offers nonstop service today and JetBlue is not present in a meaningful way. Nov. 27, 2023, Tr. Vol. 2, 106:12-107:25 (Hill/Defs. Expert). The purported benefits are based on JetBlue's plans to convert Spirit planes to JetBlue planes, and Dr. Hill has applied the misnomer "increased competition routes" to these markets. Nov. 27, 2023, Tr. Vol. 2, 99:17-21, 160:15-19 (Hill/Defs. Expert). This category of markets is largely conterminous with the Spirit-only nonstop markets where harm was calculated. Nov. 27, 2023, Tr. Vol. 2, 106:12-107:25 (Hill/Defs. Expert).

666. Dr. Hill purported to calculate consumer benefits in the Spirit-only nonstop routes by using his "entry intensity" model to analyze how JetBlue and Spirit each impact rivals' fares when they enter a new route or market. Nov. 27, 2023, Tr. Vol. 2, 99:17-100:8 (Hill/Defs. Expert). Because Dr. Hill only focused on the impact JetBlue and Spirit have on rivals' fares when each enters a new route, his benefits calculation neither accounts for the low fares that Spirit itself brings to routes when it enters a new market nor gives a complete picture of the fares available to consumers in a market after either JetBlue's or Spirit's entry. Nov. 27, 2023, Tr. Vol. 2, 100:5-18 (Hill/Defs. Expert); *see also* Nov. 20, 2023, Tr. Vol. 1, 23:5-25:1 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 93. Dr. Hill indicated that his model cannot be reliably used to evaluate competitive effects in the overlap markets where JetBlue and Spirit compete today, *see supra* Part V.D.3, in part because his focus on rivals' fares would fail to capture the full harm to passengers that would be felt by passengers in these markets. Nov. 27, 2023, Tr. Vol. 2, 101:1-8, 108:22-109:2 (Hill/Defs. Expert).

667. Although Dr. Hill did not present the findings during his direct testimony, he did use his entry intensity model to assess the impact that JetBlue and Spirit each have on *all* fares

when they each enter a new market. Nov. 27, 2023, Tr. Vol. 2, 99:17-100:8, 101:9-12 (Hill/Defs. Expert). Dr. Hill acknowledged that assessing how each carrier impacts *all* fares, or market-wide average fares, is consistent with how both JetBlue and Spirit measure their impact on fares in market (*e.g.*, the JetBlue Effect and the Spirit Effect). Nov. 27, 2023, Tr. Vol. 2, 101:13-24 (Hill/Defs. Expert).

668. When Dr. Hill applied his entry intensity model to *all* fares in a market, he found that Spirit was more effective at lowering fares than JetBlue in two of his three categories of markets, which he grouped according to the amount of capacity JetBlue or Spirit added to the market upon entry. Nov. 27, 2023, Tr. Vol. 2, 104:1-17 (Hill/Defs. Expert), discussing Tr. Ex. 881. As a result, if Dr. Hill had applied his entry intensity model to all fares as opposed to just rivals' fares, he acknowledged that he would have found that consumers would be harmed, not benefitted, by the Proposed Acquisition in non-overlapping Spirit routes. Nov. 27, 2023, Tr. Vol. 2, 105:25-106:7 (Hill/Defs. Expert), discussing Tr. Ex. 881. Dr. Hill's findings are consistent with those of Plaintiffs' expert, Dr. Gowrisankaran, who found that Spirit is more effective than JetBlue at lowering market-wide average fares on a plane-for-plane basis. *See supra* Part V.D.2.

669. Dr. Hill's calculation of benefits in the Spirit-only nonstop routes assumes that, post-Proposed Acquisition, JetBlue flies the Spirit planes in the same routes Spirit flies today. Nov. 27, 2023, Tr. Vol. 2, 162:3-6 (Hill/Defs. Expert). Although Dr. Hill did not present a route-by-route calculation of the purported consumer benefits in his "increased competition" routes, he acknowledged that, if JetBlue does not keep the Spirit planes in a market where the Spirit planes are operating today, there may not be a benefit in that market. Nov. 27, 2023, Tr. Vol. 2, 161:16-163:17 (Hill/Defs. Expert).

670. Dr. Hill made no effort to independently assess whether JetBlue, as a combined

airline, was likely to keep flying the Spirit aircraft in the same markets where Spirit flies them today. Nov. 27, 2023, Tr. Vol. 2, 163:18-22 (Hill/Defs. Expert).

3. Dr. Hill's basis for concluding that JetBlue provides more value to consumers than Spirit is flawed

671. Dr. Hill concluded that, because JetBlue has a larger share of passengers on nonstop overlaps where the two carriers compete, JetBlue provides more value to customers than Spirit. Nov. 27, 2023, Tr. Vol. 2, 117:18-119:4 (Hill/Defs. Expert).

672. Dr. Hill acknowledged that these shares don't account for the fact that there are other factors, besides just consumer demand, which JetBlue and Spirit may consider when deciding how much capacity to deploy on a particular route. Nov. 27, 2023, Tr. Vol. 2, 118:12-20 (Hill/Defs. Expert).

673. Mr. Clark testified that, on some routes, particularly those between Boston and other airlines' hubs, JetBlue serves a higher proportion of business customers whereas Spirit is focused on serving leisure customers on such routes. Nov. 2, 2023, Tr. Vol. 2, 61:23-62:25 (Clark/JetBlue).

674. Dr. Hill acknowledged that, in 14 of the 51 nonstop presumption markets, it is Spirit, not JetBlue, that has the largest share, and he did not rule out the possibility that, on those 14 routes, Spirit may be providing more value to consumers than JetBlue. Nov. 27, 2023, Tr. Vol. 2, 119:17-120:16 (Hill/Defs. Expert).

675. Dr. Hill also opined that JetBlue has a greater effect than Spirit on total output in markets, and therefore JetBlue provides more value to consumers than Spirit. Nov. 27, 2023, Tr. Vol. 2, 119:5-16 (Hill/Defs. Expert).

676. However, Dr. Hill's analysis failed to account for the average daily frequency with which JetBlue and Spirit enter a market; when controlling for this factor, both airlines have

very similar effects on output, or total passengers traveling in a particular market. Nov. 20, 2023, Tr. Vol. 1, 39:20-40:18 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 824. Dr. Hill did not critique Dr. Gowrisankaran's findings on total market output as depicted in Trial Exhibit 824. Nov. 27, 2023, Tr. Vol. 1, 55:5-17 (Hill/Defs. Expert), discussing Tr. Ex. 824.

677. Dr. Hill also modified Dr. Gowrisankaran's net harm analysis of fares to support his opinion about each carrier's impact on market output. Dr Hill found an increase in total output of approximately one percent when he used Dr. Gowrisankaran's harm model to predict output, rather than fares. Nov. 27, 2023, Tr. Vol. 1, 55:5-17 (Hill/Defs. Expert); *see also* Nov. 20, 2023, Tr. Vol. 1, 37:24-38:12 (Gowrisankaran/Pls. Expert), discussing Tr. Ex. 832.

678. However, this use of Dr. Gowrisankaran's net harm analysis is inappropriate because his analysis purposefully holds each airline's capacity, or number of planes (a metric fundamentally linked to the amount of capacity in a market), constant. Nov. 20, 2023, Tr. Vol. 1, 38:14-39:19 (Gowrisankaran/Pls. Expert), discussing Gowrisankaran Direct Presentation at slide 104.

679. Notably, Dr. Hill did not use his entry intensity model to analyze how the Proposed Acquisition would impact total output, or number of passengers. Nov. 27, 2023, Tr. Vol. 2, 159:22-160:3 (Hill/Defs. Expert). Although Dr. Hill thought it would be useful to understand what Dr. Gowrisankaran's model predicts about total output, he did not think it would be useful to see whether his own model predicts an increase in passengers. Nov. 27, 2023, Tr. Vol. 2, 160:4-9 (Hill/Defs. Expert).

4. Defendants' New Combined Network Plan is not credible

680. JetBlue started to put together the final, or "New" Combined Network Plan in January 2023, several months after the Acquisition Agreement was signed, and only finished the New Combined Network Plan in May 2023. Nov. 9, 2023, Tr. Vol. 1, 57:23-58:25, 61:16-62:4

(Friedman/JetBlue). In fact, the slide deck summarizing the New Combined Network Plan was created specifically for the Department of Justice in response to its investigation of the Proposed Acquisition. Nov. 9, 2023, Tr. Vol. 1, 60:19-61:11 (Friedman/JetBlue).

681. The set of routes included in the New Combined Network Plan is different than the set of routes included in the synergies modeling that was used to justify the Proposed Acquisition to JetBlue's Board of Directors. Nov. 9, 2023, Tr. Vol. 1, 62:9-24 (Friedman/JetBlue), discussing Tr. Ex. 362 at -882.

682. JetBlue's New Combined Network Plan assumes, unlike the synergies analyses prepared prior to the signing of the Acquisition Agreement, *supra* Part VI.A-B, that JetBlue would *maintain* existing Spirit capacity on all current routes, with exceptions for routes touching airports with divestitures. Nov. 9, 2023, Tr. Vol. 1, 70:21-71:5 (Friedman/JetBlue), discussing Tr. Ex. 362 at -928. But JetBlue did not conduct any quantitative analysis on a route-by-route level, as part of designing the New Combined Network Plan, to confirm that maintaining these routes would be profitable. Nov. 9, 2023, Tr. Vol. 1, 71:6-72:4 (Friedman/JetBlue).

683. The New Combined Network Plan was also created prior to the decision enjoining the NEA and was based on a July 2023 schedule incorporating projected NEA flying. Friedman (JetBlue) Lit. Dep. 210:1-211:12, June 21, 2023. [redacted]. Friedman (JetBlue) Lit. Dep. 213:14-214:1, June 21, 2023.

5. Defendants have failed to show that the Proposed Acquisition produces merger-specific growth

684. A comparison of JetBlue's combined network plans, both the Original Combined Network Plan created in the ordinary course and the New Combined Network Plan created

during this litigation, to the Defendants' standalone plans suggests that there would be reductions in daily departures out of key metropolitan areas compared to what the carriers could achieve on a standalone basis. Nov. 21, 2023, Tr. Vol. 2, 94:9-97:14 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slides 62-63.

685. The combined standalone plans would result in similar levels of service from Fort Lauderdale as the Original Combined Network Plan and the New Combined Network Plan. Nov. 21, 2023, Tr. Vol. 2, 96:5-97:14 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 63. Likewise, JetBlue has enough gate infrastructure to grow substantially at Fort Lauderdale even without the Proposed Acquisition. Friedman 30(b)(6) Lit. Dep. 43:7-15, 44:8-13, June 22, 2023. And Spirit's current capacity could fit into JetBlue's existing Fort Lauderdale gate portfolio, even after accounting for the divestitures. Friedman 30(b)(6) Lit. Dep. 41:25-42:7, June 22, 2023. In addition, the New Combined Network Plan assumes that JetBlue will be allocated additional gates at Fort Lauderdale by July 2027, but JetBlue has not received confirmation it would receive those gates. Nov. 9, 2023, Tr. Vol. 1, 66:10-68:5 (Friedman/JetBlue), discussing Tr. Ex. 362 at -882. Moreover, increasing connecting service through Fort Lauderdale is not merger-specific because (a) both Spirit and JetBlue already operate significant connecting traffic through Fort Lauderdale, and (b) they could grow on a standalone basis. Nov. 21, 2023, Tr. Vol. 2, 93:15-94:8 (Chipty/Pls. Expert). For example, JetBlue had a pre-COVID goal of increasing its average daily departures at Fort Lauderdale to 140 on a standalone basis. Friedman (JetBlue) Lit. Dep. 99:1-22, 104:18-105:4, 123:17-124:12, June 21, 2023.

686. In addition, standalone network plans for JetBlue and Spirit would result in a greater increase in service from MCO and Las Vegas' Harry Reid International Airport ("Las

Vegas" or "LAS") than either of the plans for the combined network. Nov. 21, 2023, Tr. Vol. 2, 96:5-97:14 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 63.

687. Although the New Combined Network Plan projects greater flying out of Boston, it does not anticipate any change in growth at Boston that JetBlue would not have achieved by itself. Nov. 9, 2023, Tr. Vol. 1, 65:11-66:7 (Friedman/JetBlue), discussing Tr. Ex. 362 at -888. JetBlue currently has the gate capacity to accommodate additional departures at Boston on a standalone basis, without the Proposed Acquisition. Nov. 9, 2023, Trial Vol. 1, 65:7-10 (Friedman/JetBlue). The New Combined Network Plan assumes that Spirit's Boston gates are to be divested while maintaining Spirit's current frequency levels (*i.e.*, number of departures per route). Tr. Ex. 362 at -882. In other words, JetBlue determined that Spirit's current capacity and incremental growth could fit within JetBlue's *existing* Boston gate portfolio. Nov. 9, 2023, Tr. Vol. 1, 63:12-65:10 (Friedman/JetBlue), discussing Tr. Ex. 362. Accordingly, JetBlue currently has the gate capacity to accommodate additional departures at Boston on a standalone basis, without the Proposed Acquisition. Nov. 9, 2023, Trial Vol. 1, 65:7-10 (Friedman/JetBlue).

688. In addition, and separate from the Original and New Combined Network Plans, JetBlue intends to grow its presence at Boston back to 2019 network levels, *regardless of whether the Spirit acquisition is consummated*. Friedman (JetBlue) 30(b)(6) CID Dep. 85:6-86:8, 249:2-14, Jan. 19, 2023. Thus, the New Combined Network Plan does not anticipate any change in growth at Boston that JetBlue would not have achieved by itself. Nov. 9, 2023, Tr. Vol. 1, 65:11-66:7 (Friedman/JetBlue), discussing Tr. Ex. 362 at -888.

689. The combined standalone plans would result in a greater increase in service from [redacted] than the Original Combined Network Plan, but less service than the New Combined Network Plan. This difference is likely an artifact of timing and

reflects the recent opening of a new terminal at [redacted] Nov. 21, 2023, Tr. Vol. 2, 96:5-97:14 (Chipty/Pls. Expert), discussing Chipty Direct Presentation at slide 63.

690. Finally, the New Combined Network Plan reflects a plan to create a hub in another major U.S. metro area, [redacted]. However, like Fort Lauderdale, JetBlue has not received confirmation from the relevant [redacted] airport authority that it will actually receive the gates necessary to operate this hub. Nov. 9, 2023, Tr. Vol. 1, 68:15-69:19 (Friedman/JetBlue).

691. Defendants' expert, Dr. Hill, however, did not quantify to what extent, if any, the combined JetBlue would be bigger than JetBlue and Spirit as standalone competitors. Nov. 27, 2023, Tr. Vol. 2, 161:3-6 (Hill/Defs. Expert).

6. Defendants have failed to produce credible evidence that the Proposed Acquisition would increase capacity

692. JetBlue did not perform any quantitative analysis to confirm that the Proposed Acquisition would result in increased utilization that would offset the loss of seats from transitioning Spirit's planes to JetBlue's configuration. Friedman (JetBlue) 30(b)(6) Lit. Dep. 157:3-12, 158:20-159:3, June 22, 2023. JetBlue's deal modeling did not contemplate increased utilization on the Spirit aircraft, either. Tr. Ex. 436 at -850 (providing this information in tab "NK, B6 utilization").

693. Analysis by Defendants' industry expert, Mr. Scheff, did not support his claim that the Proposed Acquisition will increase utilization of their combined fleet and, in turn, create additional capacity (as measured by annual seat departures). The only thing "virtually certain" in Mr. Scheff's calculations is that JetBlue's plans to reconfigure Spirit's fleet and remove seats on each aircraft will result in the decrease of more than 6.1 million annual seat departures. Nov. 28, 2023, Tr. Vol. 2, 109:1-18, 110:3-8, 145:25-146:12 (Scheff/Defs. Expert); Tr. Ex. 909.

694. To offset this reduction, Mr. Scheff attempted to calculate two utilization changes—increasing Spirit's off-peak and Tuesday/Wednesday flying patterns to match JetBlue's pattern ("Schedule Changes") and the more efficient use of aircraft due to pooling ("Fleet Optimization"). Tr. Ex. 909. There is no evidence that JetBlue plans to implement them post- Proposed Acquisition, Nov. 28, 2023, Tr. Vol. 2, 111:10-14 (Scheff/Defs. Expert), that they are profitable, *id.* at 119:22-121:12, or that they are merger-specific, Nov. 21, 2023, Tr. Vol 2, 107:20-108:12 (Chipty/Pls. Expert). Mr. Scheff's Schedule Changes analysis is unreliable because it fails to account for the fact that (1) Spirit's peak utilization is higher than JetBlue's and, therefore, likely had higher absolute utilization rates than JetBlue in some of the months in which he claims Spirit could increase utilization; and (2) Spirit's receipt of new aircraft in late 2019 appears to have caused an anomaly in the December 2019 data, likely leading Mr. Scheff to significantly overstate the benefits of the Schedule Changes. Nov. 28. 2023, Tr. Vol. 2, 114:9-115:3, 117:7-119:21 (Scheff/Defs. Expert); Ex. 902 (showing an 18% gap between Spirit and JetBlue relative peak utilization rates in December 2019, versus less than 6% in all other months); *compare* Ex. 909 *with* Ex. 903 (December 2019 accounts for approximately 20% of the increased annual seat departures calculated in Mr. Scheff's Schedule Changes analysis). Furthermore, Mr. Scheff's Fleet Optimization analysis is unreliable because he (1) made changes to the combined schedule, but not the standalone schedules, resulting in an apples-to-oranges comparison, and (2) admits that he did not undertake an iterative process to refine the output of the software, as is the industry's (and his own) practice. Nov. 28, 2023, Tr. Vol. 2, 127:13-24, 128:8-17, 132:24-135:13 (Scheff/Defs. Expert).

695. Even if these claimed increases are fully recognized as credible, Mr. Scheff's analysis shows that the Proposed Acquisition will result in a yearly net capacity decrease of

approximately 380,000 seat departures. Nov. 28, 2023, Tr. Vol. 2, 101:24-102: 18, 108:5-21 (Scheff/Defs. Expert); Tr. Ex. 909. If Mr. Scheff had considered JetBlue's plans to taper the growth of the combined firm to five percent, *supra* Part VI.C., then his calculation of change in seat departures would have fallen by an additional 3.35 million seat departures, producing a net reduction of 3.73 million seat departures. Nov. 21, 2023, Tr. Vol. 2, 108:15-109:3, 109:16:24 (Chipty/Pls. Expert), describing Tr. Ex. 879.

696. Despite calculating a decrease in capacity, Mr. Scheff opined that the combined airline's capacity will increase due to three other categories of utilization changes: (1) increased use of Spirit's A321 aircraft on longer routes; (2) reduction in the number of operational spares, *i.e.,* returning additional planes to passenger service; and (3) increased redeye service. Nov. 28, Tr. Vol. 2, 51:6-25 (Scheff/Defs. Expert). Mr. Scheff lacks support for these claims in any JetBlue business plan and he does not actually calculate the additional capacity attributable to these changes. Nov. 28, 2023, Tr. Vol. 2, 145:16-24, 147:11-14 (Scheff/Defs. Expert).

Dated: December 13, 2023

Respectfully submitted,

/s/ Edward W. Duffy

Edward W. Duffy
Stephanie E. Pearl
Maisie A. Baldwin
John J. DiMarco
Michelle Livingston
Sarah V. Riblet
Brendan Sepulveda
Garrett Windle
United States Department of Justice, Antitrust Division
450 Fifth Street, NW, Suite 8000
Washington, DC 20530
Telephone: (202) 812-4723
Fax: (202) 307-5802
Email: edward.duffy@usdoj.gov

Attorneys for Plaintiff United States of America

/s/ William T. Matlack

William T. Matlack (MA Bar No. 552109)
Daniel H. Leff (MA BBO No. 689302)
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
Telephone: (617) 727-2200
Email: William.Matlack@mass.gov

Attorneys for Plaintiff Commonwealth of Massachusetts

/s/ Olga Kogan

Olga Kogan (*admitted pro hac vice*)
New York State Office of the Attorney General
28 Liberty Street, 20th Floor
New York, NY 10005
Telephone: (212) 416-8262
Email: olga.kogan@ag.ny.gov

Attorney for Plaintiff State of New York

/s/ C. William Margrabe

C. William Margrabe (*admitted pro hac vice*)
Office of the Attorney General
400 6th Street NW, Suite 10100

Washington, DC 20001
Telephone: (202) 727-6294
Email: will.margrabe@dc.gov

Attorney for Plaintiff District of Columbia

/s/ Schonette J. Walker
Schonette J. Walker (*admitted pro hac vice*)
Gary Honick (*admitted pro hac vice*)
Byron Warren (*admitted pro hac vice*)
Maryland Office of the Attorney General
200 St. Paul Place, 19th Floor
Baltimore, MD 21202
410-576-6470
swalker@oag.state.md.us
ghonick@oag.state.md.us
bwarren@oag.state.md.us

Attorneys for Plaintiff State of Maryland

/s/ Jamie L. Miller
Jamie L. Miller (*admitted pro hac vice*)
Supervising Deputy Attorney General
Office of the California Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Tel: (415) 510-3565
Email: Jamie.Miller@doj.ca.gov

Attorney for Plaintiff State of California

/s/ Ana Atta-Alla
Ana Atta-Alla (*admitted pro hac vice*)
State of New Jersey - Office of the Attorney General
Division of Law
124 Halsey Street – 5th Floor
Newark, NJ 07102
Telephone: (973) 648-6835
Ana.Atta-Alla@law.njoag.gov

Attorney for Plaintiff State of New Jersey

/s/ Jessica V. Sutton
Jessica V. Sutton (*admitted pro hac vice*)
Special Deputy Attorney General
North Carolina Department of Justice

Post Office Box 629
Raleigh, NC 27602
Tel: 919-716-6000
E-mail: jsutton2@ncdoj.gov

Attorney for Plaintiff State of North Carolina

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the ECF system and will be sent electronically to the registered participants on the Notice of Electronic Filing.

Dated: December 13, 2023 *<u>/s/ Edward W. Duffy</u>*